

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ARM LTD.,

Plaintiff,

v.

QUALCOMM INC., QUALCOMM
TECHNOLOGIES, INC., and NUVIA, INC.,

Defendants.

C.A. No. 22-1146-MN

**REDACTED - PUBLIC
VERSION FILED
JANUARY 10, 2025**

EXHIBIT A TO PLAINTIFF'S MOTION TO SEAL AND REDACT

Dated: January 3, 2025

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Exhibit A

13:41:50 1

IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF DELAWARE

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ARM LTD.,)

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a U.K. corporation,)

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Plaintiff,)

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v.)

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QUALCOMM, INC.,)

9

a Delaware corporation,)

et al.,)

10

Defendants.)

11

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Wednesday, November 20, 2024

13

2:00 p.m.

14

Pretrial Conference

15

844 King Street

16

Wilmington, Delaware

17

18

BEFORE: THE HONORABLE MARYELLEN NOREIKA

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United States District Court Judge

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APPEARANCES:

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23

BY: ANNE SHEA GAZA, ESQ.

24

BY: ROBERT M. VRANA, ESQ.

BY: DANIEL MACKRIDES, ESQ.

25

-and-

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13 BY: JENNIFER YING, ESQ.

14 -and-

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22 BY: FLINT PATTERSON, ESQ.

23 Counsel for the Defendants

24 - - - - -

14:00:58 25 COURTROOM DEPUTY: All rise. The United States

District Court for the District of Delaware is now in

14:04:02 1 session. The Honorable Maryellen Noreika presiding.

14:04:02 2 THE COURT: All right. Good afternoon,

14:04:04 3 everyone. Please be seated.

14:04:06 4 All right. Ms. Gaza.

14:04:09 5 MS. GAZA: Good afternoon, Your Honor. Anne

14:04:11 6 Gaza from Young, Conaway on behalf of plaintiff, ARM. I'm

14:04:15 7 joined today by Daralyn Durie, Erik Olson, Shaelyn Dawson,

14:04:22 8 Nicholas Fung, Daniel Muino, Henry Huttinger, Laura Gilbert

14:04:28 9 Remus all from Morrison Foerster as well as my colleagues,

14:04:32 10 Rehoboth Vrana and Daniel Mackrides.

14:04:35 11 THE COURT: All right. Good afternoon everyone.

14:04:37 12 MR. BLUMENFELD: Good afternoon, Your Honor.

14:04:38 13 THE COURT: Good afternoon.

14:04:39 14 MR. BLUMENFELD: Jack Blumenfeld from Morris

14:04:44 15 Nichols for Qualcomm and NuVia. With me at counsel table

14:04:47 16 are Karen Dunn, Catherine Nyrady and Jacob Braly from Paul

14:04:53 17 Weiss. Behind them, Jennifer Ying from Morris Nichols, Erin

14:04:57 18 Morgan from Paul Weiss, and behind them, Flint Patterson,

14:05:02 19 Ruby Garrett and, Chris Longman from Qualcomm.

14:05:06 20 THE COURT: All right. Welcome to all of you

14:05:08 21 and good afternoon.

14:05:09 22 Okay. All right. Let me just get my document

14:05:19 23 ready here.

14:05:26 24 So I appreciate the letter that we received last

14:05:31 25 night from the defendants on simplifying the case. I think

14:05:39 1 it's dropping the counterclaims. How are we going to
14:05:43 2 resolve those?

14:05:46 3 MS. DUNN: Your Honor, they're out of the case,
14:05:51 4 so we are dropping them as claims.

14:05:54 5 THE COURT: So I always run into this problem
14:05:56 6 and then I get like after the case are they dismissed, are
14:06:00 7 they dismissed with prejudice, did you fail to put in
14:06:03 8 evidence on them, so I'm granting judgment, what are we
14:06:07 9 doing with them? You can't just say we're dropping them.
14:06:10 10 They're in the case. How do I get them out of it?

14:06:13 11 MS. DUNN: We can file a voluntary withdraw of
14:06:16 12 the claims if that is what Your Honor would like.

14:06:22 13 THE COURT: I want to know what you guys have
14:06:24 14 agreed to do. So have you talked with the other side?

14:06:28 15 MS. DUNN: We talked to the other side and
14:06:30 16 agreed that we would drop the claims so they're aware. I
14:06:33 17 don't think we've talked mechanically how we would do that.
14:06:36 18 We're happy to do that and make a submission to the Court.

14:06:39 19 THE COURT: That would be very helpful.

14:06:40 20 MS. DUNN: Okay.

14:06:41 21 THE COURT: And I don't mean to suggest that I
14:06:43 22 don't appreciate that you're dropping them, it's just that I
14:06:47 23 have gotten myself into trouble before when I don't figure
14:06:50 24 out what that means.

14:06:51 25 MS. DUNN: Understood, Your Honor. Plaintiff's

14:06:53 1 dropped their trademark claims last time on the record.

14:06:56 2 THE COURT: We should probably do something
14:06:58 3 similar, so maybe you all can figure out how that works. It
14:07:01 4 was just I should have thought of it before when they did
14:07:05 5 the trademark claims and I just didn't, but this morning for
14:07:08 6 some reason reading that letter I had a vision of the
14:07:11 7 posttrial briefing.

14:07:12 8 MS. DUNN: Understood.

14:07:13 9 THE COURT: And having to deal with it.

14:07:14 10 MS. DUNN: We'll work it out. Thank you, Your
14:07:17 11 Honor.

14:07:17 12 THE COURT: Thank you. Okay.

14:07:20 13 The Daubert motions, I have a draft order and
14:07:32 14 for whatever motions are remaining, other than the ones
14:07:38 15 defendants brought about Mr. Schoettelkotte, I am going to
14:07:42 16 deny them. And I'll get you that opinion shortly.

14:07:49 17 I'm confused with respect to Mr. Schoettelkotte,
14:07:53 18 and I read his deposition, and I don't even know how the
14:07:58 19 person who took that deposition had the patience to deal
14:08:01 20 with it, because I was trying to understand what he was
14:08:05 21 testifying on and I don't -- I don't understand it. I mean,
14:08:10 22 he's an accountant, so I would certainly understand if he
14:08:13 23 was going to testify about damages. I don't think he should
14:08:16 24 be testifying to the jury that there are no money damages
14:08:20 25 because that's an issue for me. So then it seemed like he's

14:08:26 1 left to say, hey, there is reputational damages or there is
14:08:31 2 potential damages for future contract, but for that, I'm not
14:08:38 3 sure why he is an expert to do that and he seems like he's
14:08:42 4 just relying on fact people, factual testimony from people
14:08:45 5 who could testify and the jury could decide. So I just
14:08:50 6 don't understand what he's adding as an expert that's in his
14:08:58 7 expertise.

14:08:59 8 MR. OLSON: So let me start with the opportunity
14:09:02 9 potentially as we did last time for simplification. We have
14:09:07 10 told -- there was a discussion on this yesterday. We don't
14:09:09 11 intend to call Mr. Schoettelkotte before the jury for any
14:09:12 12 purpose and they don't intend to call -- therefore don't
14:09:16 13 intend to call Mr. Kennedy. Mr. Kennedy had been on two
14:09:19 14 issues, one, their counterclaims, they've now dropped those,
14:09:23 15 and then he was responsive to Mr. Schoettelkotte.
14:09:27 16 Mr. Schoettelkotte's testimony if at all will be relevant to
14:09:31 17 specific performance and you can decide what weight to give
14:09:35 18 it in that context.

14:09:37 19 THE COURT: Okay. So how about this. I am
14:09:40 20 going to deny that motion as moot given that you're not
14:09:46 21 going to call him before the jury. To the extent that you
14:09:49 22 do wind up calling him in front of me, you guys can re-raise
14:09:55 23 any concerns that you have and I'll deal with them. Okay?

14:09:58 24 MR. OLSON: Understood, Your Honor.

14:09:59 25 THE COURT: All right. Thank you for that.

14:10:00 1 Okay. Are there any other issues, and I know
14:10:04 2 you guys offered to tell us in advance what you had come to
14:10:08 3 an agreement on and I thought it was just as easy at this
14:10:11 4 point for you to tell me here. So I understand that
14:10:15 5 Mr. Schoettelkotte and Mr. Kennedy will not be testifying in
14:10:18 6 front of the jury. Anything else that you all worked out?

14:10:25 7 MS. YING: Your Honor, Jennifer Ying from Morris
14:10:27 8 Nichols on behalf of the defendants. There are two
14:10:29 9 paragraphs in the PTO cover that we have resolved, and then
14:10:33 10 there are two MILs that the parties have reached agreement
14:10:37 11 on that we'll put on the record. With regards to the PTO
14:10:40 12 cover, paragraph 49, the parties have agreed to adopt
14:10:45 13 defendants' proposal on demonstratives that need to be
14:10:48 14 disclosed. For paragraph 72 in the PTO cover, the parties
14:10:55 15 have also agreed to adopt defendants' proposal regarding
14:10:59 16 disclosing transition statements in connection with
14:11:02 17 deposition testimony.

14:11:05 18 THE COURT: Okay.

14:11:06 19 MS. YING: I will turn the floor over to
14:11:08 20 Mr. Olson with regards to plaintiff, ARM MIL number 1 that
14:11:12 21 we've reached an agreement on and then I will put on the
14:11:15 22 record our agreement for defendants' MIL number 3 that we've
14:11:19 23 also reached agreement on.

14:11:20 24 THE COURT: Okay. Give me one second. Remove
14:11:26 25 those other paragraphs. Okay. Which motion in limine is

14:11:30 1 this?

14:11:31 2 MR. OLSON: This is motion in limine number 1
14:11:33 3 having to do with evidence and argument regarding specific
14:11:36 4 performance, Your Honor. What the parties have agreed is
14:11:40 5 that -- I want to get the defendant -- they use -- I'm
14:11:48 6 reading from an e-mail. The defendants agree not to make
14:11:52 7 arguments or present evidence regarding ARM's requested
14:11:55 8 remedies, specific performance, or the scope, nature or
14:11:59 9 impact of that requested remedy. Plaintiffs understand that
14:12:04 10 defendants want to be able to present evidence regarding
14:12:07 11 Section 15.1 of the NuVia ALA and correspondence between the
14:12:13 12 parties and Qualcomm regarding ARM's request that Qualcomm
14:12:17 13 comply with that provision as well as examine ARM's
14:12:21 14 witnesses regarding the requests and the parties'
14:12:23 15 communications. And as a reminder, Section 15.1 includes
14:12:27 16 the words licensee, NuVia. We will immediately discontinue
14:12:34 17 any use and distribution of a series things and that
14:12:38 18 includes licensee shall either destroy or return to ARM a
14:12:42 19 series of things.

14:12:43 20 Further, defendants in their response and
14:12:47 21 agreement said that defendants intend to argue at trial that
14:12:49 22 the remedy provided in 15.1 includes the destruction of
14:12:54 23 material and that ARM sought destruction. With those
14:12:58 24 statements, there is an agreement that there will not be,
14:13:01 25 again, evidence and argument regarding specific performance.

14:13:05 1 THE COURT: All right. And defendants agree?

14:13:10 2 MS. DUNN: We do, Your Honor.

14:13:11 3 THE COURT: Thank you.

14:13:13 4 MS. YING: Your Honor, with respect to
14:13:17 5 defendants' motion in limine number 3, and that's regarding
14:13:19 6 the Apple v. Williams case and the use of documents from
14:13:23 7 that litigation, the parties have agreed that ARM may
14:13:26 8 question Mr. Williams about the substance of those documents
14:13:30 9 subject to the following: ARM will not reference the NuVia
14:13:34 10 or Williams Bates stamps on those documents and will not
14:13:38 11 reference the Apple v. Williams litigation or that these
14:13:43 12 documents came from that litigation. Defendants have
14:13:45 13 represented that the documents were collected prior to the
14:13:50 14 termination of the NuVia ALA and on that basis, ARM will not
14:13:54 15 examine Mr. Williams regarding whether he personally
14:13:57 16 possessed the documents produced in the Apple v. Williams
14:14:01 17 litigation following the termination of the NuVia ALA.

14:14:06 18 ARM will not argue that the possession of these
14:14:09 19 documents post termination of the NuVia ALA constitutes a
14:14:14 20 violation or breach of Section 15.1 of the NuVia ALA. ARM
14:14:19 21 reserves the right to refer to the Bates stamps if
14:14:23 22 Mr. Williams denies that he personally possessed these
14:14:26 23 documents bearing the Williams stamps or that NuVia did not
14:14:30 24 possess the documents bearing the NuVia stamp. And
14:14:33 25 defendants do not waive any argument that the Apple v.

William documents constitute ARM confidential information or are subject to the NuVia ALA termination provision.

THE COURT: All right. Thank you. And you all agree to that, plaintiffs?

MS. DURIE: Yes, Your Honor.

THE COURT: Okay. Thank you for coming to those agreements.

All right. Then we have ARM's motion in limine number 2 which is excluding evidence that either party breached the Qualcomm ALA including the October 22nd letter. And this one -- all right. Let me hear from ARM.

MR. OLSON: Thank you, Your Honor.

First there is agreement within the papers that defendants will not refer to the second lawsuit or to the allegations of breach regarding Section [REDACTED]

THE COURT: Or [REDACTED]

MR. OLSON: Or [REDACTED] correct. So those issues, that part of the motion in limine is resolved.

It appears that the center of the issue is the October 22nd letter.

THE COURT: Just so I'm clear, it was -- I didn't understand it to be referring to the lawsuit, I understood it to be mentioning that there was another breach. So by you saying you're not going to refer to the lawsuit, you mean they're not going to assert that there was

14:16:27 1 a breach?

14:16:28 2 MR. OLSON: That they're not going to assert or
14:16:30 3 make claims, introduce evidence regarding a separate breach
14:16:34 4 of the ALA. And I understand them to not -- to saying that
14:16:39 5 they're not going to refer to the lawsuit, I may have that
14:16:42 6 wrong.

14:16:42 7 THE COURT: I wanted to make sure it was both.

14:16:45 8 MS. DUNN: Yes, Your Honor, it was both, we
14:16:47 9 don't believe those breaches --

14:16:48 10 THE COURT: You're not going to be talking about
14:16:50 11 those?

14:16:51 12 MS. DUNN: Yes, we're not going to be talking
14:16:53 13 about it.

14:16:53 14 THE COURT: All right. Okay. And I think I got
14:16:56 15 from the papers that you said with respect to that, the only
14:17:00 16 reason you would do that is if they opened the door to
14:17:03 17 something, which makes sense.

14:17:04 18 MS. DUNN: Yes, Your Honor.

14:17:05 19 THE COURT: Okay. Then we have the October 22nd
14:17:07 20 letter which defendants says evidences ARM's scheme to
14:17:12 21 prevent Qualcomm from commercializing its custom CPU.

14:17:17 22 MR. OLSON: Understood, Your Honor. And we
14:17:18 23 don't believe that the letter has any probative evidence
14:17:21 24 towards the question of the license defense which is the
14:17:25 25 only issue under which it would have a meaning or importance

14:17:29 1 in connection with this trial.

14:17:30 2 And the license defense entirely depends on what
14:17:35 3 is the nature and scope of the Qualcomm ALA and license. It
14:17:40 4 does not then depend on what notices of material breach were
14:17:45 5 given, whether those will result in cure, what discussions
14:17:48 6 are happening between the parties over cure and what will
14:17:52 7 happen if it is not cured.

14:17:54 8 Moreover, California and law generally says that
14:18:00 9 the motives for enforcing a contract are not relevant to the
14:18:06 10 determination of whether or not a breach has occurred within
14:18:10 11 the nature and scope of the existing contract. You
14:18:14 12 determine the nature and scope of the contract based on the
14:18:18 13 language of the agreement and the scope of its license. For
14:18:22 14 both of these reasons, the evidence is not relevant.

14:18:27 15 And the Century 21 case speaks to that issue.
14:18:31 16 So also the Century 21 case also cites a Seventh Circuit
14:18:36 17 opinion called *Tuf Racing Products v. American Suzuki* which
14:18:42 18 is 223 F.3d 585 from Judge Posner speaking to the same issue
14:18:48 19 regarding motive for enforcement. Your motive for enforcing
14:18:53 20 a contract is not evidence of whether or not the contract is
14:18:57 21 being breached or not being breached in the context.

14:19:00 22 And given these circumstances, we don't believe
14:19:05 23 that it provides any relevance and it further then creates
14:19:08 24 undue prejudice under 403 in light of the creating a
14:19:16 25 question in the jury's mind regarding -- in many ways what

1 goes also to specific performance of what the downstream
2 effects may be one way or the other.

3 THE COURT: All right. Let me hear from
4 defendants.

5 MR. OLSON: Thank you, Your Honor.

6 MS. NYARADY: Thank you, Your Honor. Catherine
7 Nyarady for Qualcomm. As Mr. Olson said and is in our
8 papers, we do have a defense based on -- we have a
9 counterclaim and a defense based on the Qualcomm ALA covers
10 our products. And with respect to Qualcomm's alleged breach
11 under the Qualcomm ALA, ARM itself has put that in the case
12 starting at the very beginning. When you go to their answer
13 at DI 21, they say Qualcomm is not only trying to develop an
14 unlicensed product, but it's also materially breaching its
15 ALA with ARM. It then goes on multiple more times in
16 paragraph 250 --

17 THE COURT: Wait, I thought you guys agreed that
18 nobody was going to talk about breaching the Qualcomm ALA.

19 MS. NYARADY: That's with respect to ARM's
20 breach of the ALA, that's the subject of the second lawsuit.
21 I think we're talking here the second piece of this that is
22 not agreed upon is the Qualcomm breach which is the subject
23 of that October 22nd letter as well. And I'm just making
24 the point, Your Honor, that this breach has been in the case
25 since the very beginning. And it's been in the case as a

1 result of the response that ARM gave to our counterclaim and
2 to our defense when we said that we're licensed under the
3 Qualcomm ALA.

4 So as early as November 15, 2022, in DI 21,
5 there are multiple allegations made by ARM in the pleadings,
6 at paragraph 250 they say Qualcomm is materially breaching
7 its own ALA and giving ARM the right to terminate that
8 agreement. And Qualcomm -- the Qualcomm ALA does not
9 provide licensing coverage for the products in question.

10 There is more reference to this, there is at
11 least five or six references throughout their pleading. In
12 the most recent pleading at DI 318, they repeal all these.
13 The breach of the Qualcomm ALA, it's not an issue in the
14 case in terms of it's not on the verdict form that they have
15 sought a breach of the Qualcomm ALA, but we have asked for a
16 determination that our products are covered by the Qualcomm
17 ALA, that is on our proposed verdict form.

18 And in response to that, there have been
19 repeated allegations that the Qualcomm ALA has been breached
20 by Qualcomm. The letter on October 22nd is actually not new
21 news in the sense of alleging these breaches. It has been
22 in the case squarely and we anticipate that it is going to
23 be raised by ARM in response to the arguments that we have
24 regarding the fact that our products are licensed.

25 In addition, most recently at the pretrial order

14:22:15 1 that was filed, in Exhibit 2 at paragraph 16, ARM confirms
14:22:23 2 that one of the issues that remains to be litigated is
14:22:26 3 whether Qualcomm's ALA provides a license to the technology
14:22:30 4 developed by NuVia prior to the acquisition, and then at
14:22:35 5 Exhibit 13 of the pretrial order in plaintiff's statement of
14:22:39 6 intended proofs, there are numerous paragraphs talking at
14:22:42 7 length about the Qualcomm ALA, the scope of the ALA. In
14:22:49 8 addition -- the paragraphs for reference, it's 25, 26, 27 --

14:22:54 9 THE COURT: But help me out, I don't understand
14:22:57 10 the scheme. You want to say look, you're not saying we
14:23:05 11 didn't -- you're saying we didn't breach because whatever,
14:23:12 12 and then you're saying but we're licensed? How is you being
14:23:22 13 licensed under a separate agreement a defense to whether
14:23:26 14 Qualcomm breached or NuVia breached the original agreement?

14:23:30 15 MS. NYARADY: Well, Qualcomm and NuVia obviously
14:23:33 16 are separate parties.

14:23:34 17 THE COURT: I know, I know, please don't tell me
14:23:36 18 that. I get it. I'm not that dumb. I got it.

14:23:39 19 MS. NYARADY: The issue, Your Honor, is the fact
14:23:41 20 that ARM has taken the position that Qualcomm is selling
14:23:45 21 unlicensed products currently. And so the response to that
14:23:51 22 has been that we are licensed under the Qualcomm ALA, we are
14:23:54 23 allowed to take the technology from NuVia under the Qualcomm
14:23:58 24 ALA and work with that technology as we've done.

14:24:03 25 THE COURT: They're arguing that part of the

14:24:04 1 breach is that you all, whichever party, was supposed to
14:24:10 2 destroy everything and didn't, and the defense is well,
14:24:20 3 we're licensed to have it, so we didn't have to destroy it?

14:24:24 4 MS. NYARADY: Yes, Your Honor, I think that's
14:24:26 5 part of it. That we got the material under the Qualcomm ALA
14:24:31 6 pre-termination and we're licensed under the Qualcomm ALA,
14:24:34 7 these are not unlicensed products. We also importantly,
14:24:38 8 Your Honor, have an unclean hands defense.

14:24:40 9 THE COURT: That's not going before the jury,
14:24:43 10 though, right? Isn't that an equitable defense?

14:24:48 11 MS. NYARADY: I think there is a question as to
14:24:51 12 the full scope of what's going to the jury.

14:24:53 13 THE COURT: When are you going to decide that?
14:24:55 14 We're at the pretrial conference.

14:24:57 15 Let her finish this one and then I'll let you go
14:25:01 16 to that. But yeah, okay.

14:25:04 17 MS. NYARADY: But there are allegations
14:25:06 18 regarding why ARM refused, for example, to give consent to
14:25:10 19 the acquisition, and again, you know, we've said this
14:25:17 20 before, but part of the motivation was getting out from
14:25:20 21 under the Qualcomm ALA. So the Qualcomm ALA has been
14:25:24 22 intertwined with a number of issues that are directly
14:25:27 23 relevant.

14:25:27 24 THE COURT: Okay. So I am going to grant this
14:25:30 25 motion in limine. No other parties can assert that the

14:25:35 1 other one breached the Qualcomm ALA. The October 22nd
14:25:42 2 letter defendants claim is relevant to show ARM's scheme but
14:25:47 3 it seems more prejudicial and confusing than helpful. So I
14:25:53 4 am not going to allow that. That being said, I don't think
14:25:58 5 that that ruling precludes defendants from arguing that the
14:26:04 6 products are licensed. Right? There is no -- just make
14:26:09 7 sure I'm not misunderstanding my ruling.

14:26:12 8 MS. NYARADY: I would agree that your ruling
14:26:13 9 does not impact our ability to argue that the products are
14:26:15 10 licensed.

14:26:16 11 THE COURT: Okay. Thank you. All right. So
14:26:18 12 that is my ruling on plaintiff's motion in limine number 2.
14:26:22 13 And Ms. Dunn, if you want to tell me about unclean hands
14:26:26 14 just to get that out of the way, that's fine.

14:26:28 15 MS. DUNN: So, Your Honor, I am prepared to
14:26:32 16 address an issue that came up in the pretrial order draft
14:26:37 17 which is this issue of whether ARM says that we have DJ
14:26:45 18 claims that are equitable. Our view is they are not
14:26:49 19 equitable and there is a lot of law on this. It's not been
14:26:52 20 briefed before Your Honor, there is Supreme Court precedent,
14:26:55 21 Third Circuit precedent. I'm very happy to speak about this
14:26:59 22 today, but Your Honor may want --

14:27:00 23 THE COURT: You can give me three pages and they
14:27:03 24 can respond in three pages, that's it.

14:27:05 25 MS. DUNN: We're happy to do that.

14:27:07 1 THE COURT: How many issues are there?

14:27:11 2 MS. DUNN: Well, we moved for a declaratory
14:27:14 3 judgment on five issues.

14:27:21 4 THE COURT: What are the issues that you have a
14:27:22 5 dispute as to whether they're equitable or they're going to
14:27:26 6 the jury? I don't care about --

14:27:29 7 MS. DUNN: I think all of them, although I'm not
14:27:32 8 sure this has been discussed about granularity with the
14:27:37 9 parties.

14:27:37 10 THE COURT: You have three pages to convince me.
14:27:40 11 You need to talk about it first. And you need to get it to
14:27:43 12 my Friday, your part, and you can respond by Monday.

14:27:45 13 MS. DURIE: Okay.

14:27:47 14 MS. DUNN: Yes, Your Honor.

14:27:48 15 THE COURT: Plaintiff's motion in limine number
14:27:50 16 3 seeks to exclude evidence relating to the nature, scope,
14:27:55 17 or amount of royalties paid by defendants to ARM under the
14:27:59 18 Qualcomm TLA. ARM says those royalties are irrelevant to
14:28:06 19 the breach issues and defendants want to use the TLA royalty
14:28:10 20 to show ARM's motive behind the case, that it wants more
14:28:14 21 money and they also want to use it as part of their defense.

14:28:17 22 So can someone tell me, I tried to figure out
14:28:22 23 from looking at those contracts what these royalties are, I
14:28:25 24 think you just left off schedules or something because I
14:28:28 25 don't know. So what are we talking about here?

14:28:32 1 MR. OLSON: So we're talking about royalties
14:28:38 2 that are paid by Qualcomm to ARM --

14:28:41 3 THE COURT: How much?

14:28:42 4 MR. OLSON: There are in the neighborhood of [REDACTED]
14:28:47 5 [REDACTED] But they involve only what are called the TLAs,
14:28:53 6 and they involve products, none of which are in this case,
14:28:57 7 and involve cores that are licensed by ARM to Qualcomm, none
14:29:03 8 of which are in this case. So what happens with a series of
14:29:09 9 older products, not in this case, ARM has licensed to
14:29:15 10 Qualcomm fully developed completed CPU cores, that
14:29:26 11 technology, Qualcomm has taken those cores and put them in
14:29:30 12 certain products. None of those products where they did
14:29:32 13 that are in this case. And after they put them in and sell
14:29:35 14 those, they then pay ARM a royalty under the TLA for that
14:29:42 15 fully developed core that they took and put in. Different
14:29:45 16 than the ALA, it's not about an ALA, it's not about that at
14:29:50 17 all.

14:29:50 18 And the very specific concern that we have is
14:29:53 19 that the defendants will say we're paying [REDACTED] in
14:29:59 20 royalties to you guys and that will create a prejudice and
14:30:05 21 ambiguity in the jury's mind as to whether or not we are
14:30:08 22 already being compensated for the activities that are at
14:30:14 23 issue in this case and there is zero doubt, there is zero
14:30:17 24 dispute that the royalties that are being paid and the
14:30:20 25 amounts involved have nothing to do with the items that are

14:30:24 1 in this case.

14:30:25 2 Now, defendants separately want to argue that
14:30:30 3 the differential in royalty rates, for example, between the
14:30:34 4 NuVia ALA and -- which was higher than the Qualcomm ALA was
14:30:39 5 a motivation to request consent or deny consent with respect
14:30:45 6 to the activities. And they make claims about the
14:30:49 7 differential in rates as it applies to the ALA's and the
14:30:54 8 TLAs. To be frank, we don't think that that is nearly as
14:30:58 9 prejudicial as a statement outstanding which I think is
14:31:03 10 severely prejudicial that we're paying you a lot of money
14:31:08 11 already, we're your big partner, we give you, you know, [REDACTED]
14:31:14 12 [REDACTED] whatever the number will be, and effectively
14:31:17 13 implying or suggesting that we've already been compensated
14:31:21 14 because there is no doubt that's not true.

14:31:22 15 Even the differential between the ALA's and the
14:31:26 16 TLAs we think is irrelevant and prejudicial. The question
14:31:30 17 of motivation is sufficiently shown by the fact that the
14:31:33 18 NuVia ALA if it's relevant at all, which we've already
14:31:37 19 indicated we don't think it's relevant, if it's relevant at
14:31:40 20 all, the differential between the NuVia ALA which is
14:31:43 21 [REDACTED] more than the Qualcomm ALA, is
14:31:49 22 more than sufficient, but the reference to prior large
14:31:53 23 amounts being transferred for other technology in other
14:31:59 24 business arrangements for other products involving other
14:32:02 25 cores none of which are in this case we think should be

14:32:05 1 excluded.

14:32:12 2 MS. NYARADY: Your Honor, I want to make it very
14:32:18 3 clear that defendants are not going to argue that ARM has
14:32:22 4 already been compensated for the conduct at issue in this
14:32:26 5 litigation through those TLA payments.

14:32:29 6 I would like to correct the record, though, when
14:32:31 7 Mr. Olson says that the TLA has nothing to do with the
14:32:36 8 products in the case, payments under the TLA. That is
14:32:40 9 incorrect. The products in this case actually have a
14:32:43 10 royalty under the ALA and the TLA. So the TLA is relevant
14:32:50 11 in that regard.

14:32:50 12 But to be very clear, not only do we not intend
14:32:54 13 to imply that, we have on our witness -- I'm sorry, our
14:32:59 14 exhibit list, royalty credit memos that show that we have
14:33:04 15 tried to pay for the current products in the lawsuit under
14:33:08 16 the Qualcomm ALA, and so we are affirmatively going to put
14:33:13 17 in evidence that will resolve any of the concern that's been
14:33:17 18 raised by ARM in terms of, you know, misleading the jury or
14:33:20 19 confusing the jury. We are not going to say that any of
14:33:23 20 these payments that have been made somehow, you know,
14:33:27 21 satisfy payments that should be made with respect to these
14:33:30 22 products.

14:33:31 23 Now with respect to the relevance of the TLA
14:33:36 24 payments, it seems to us that ARM is really attempting to
14:33:41 25 tell half the story, if you will, of the relationship

1 between the parties. We are going to be -- Qualcomm is
2 going to be accused of acting in bad faith. We think the
3 TLA payments and the performance under the TLA for all
4 products across the Ecosystem show that Qualcomm is acting
5 in good faith under the agreements, that in combination with
6 our attempts to pay for all the products even in the lawsuit
7 under our agreements go to that argument. So we want to
8 show the entire relationship between the parties.

9 This is also in ARM's statement of facts and
10 issues for trial. They talk about the long-standing
11 relationship and the interaction, both sides have referenced
12 the fact that Qualcomm is the largest customer of ARM, and
13 the TLA payments are evidence of the depth of the
14 relationship between the parties and the ongoing performance
15 by Qualcomm. We think they're directly relevant to issues
16 that are in the case.

17 In addition as we said in our brief, there will
18 be evidence regarding the calculations that were done by ARM
19 about the difference between the ALA and the TLA amounts,
20 the royalty assessment. In fact, on the very day that ARM
21 learned about the acquisition, there are documents showing
22 that they went and immediately did this calculation.

23 We are going to be talking at trial about the
24 work that's done by NuVia and by Qualcomm to develop these
25 products and innovate. The difference in rates between the

1 TLA and the ALA is evidence of that because under the TLA,
2 as Mr. Olson said, products are provided that are more fully
3 formed. And so what a TLA licensee gets versus what an ARM
4 -- sorry, an ALA licensee gets are going to be at issue in
5 the case and we're going to be talking a lot about the
6 innovative work that was done by NuVia and Qualcomm to
7 develop these products and build these products under the
8 ALA, so the difference in the ratings to that as well, and
9 it does demonstrate the difference in the value of what is
10 obtained by a licensee under these different agreements.

11 Also I would point out, Your Honor, that in the
12 pretrial order at Exhibit 13, where ARM set forth its
13 intended proofs, it talks about again in paragraph 41 the
14 long-standing business relationships that it has with its
15 licensee and how trust and integrity are an important part
16 of that.

17 In paragraph 114 it talks about the impact of
18 relationships with licensees. In paragraph 115 and
19 elsewhere, it talks about the ecosystem, it calls it the
20 ecosystem of the ARM-based devices. That ecosystem includes
21 all of the products that are under the Qualcomm TLA. And
22 there repeated references in the record --

23 THE COURT: I think I have heard enough. All
24 right. So I have ARM's motion in limine number 3. It's
25 going to be granted in part and denied in part. Granted to

1 the extent that the amount of money already paid under the
2 ALA for products other than the current products at issue, I
3 think that is not relevant. Denied as to the different
4 royalty rates which appear to be relevant to defendants'
5 defense that ARM wrongfully withheld consent to transfer the
6 NuVia ALA to Qualcomm because ARM was dissatisfied with the
7 lower royalty rate it would receive.

8 All right.

9 MS. NYARADY: Thank you, Your Honor.

10 THE COURT: Now we get to Qualcomm -- maybe this
11 is you, Ms. Nyrazy, Qualcomm's motion in limine number 1.

12 MR. BLUMENFELD: With the Court's permission,
13 Mr. Braly is going to address that.

14 THE COURT: All right. Thank you.

15 MR. BRALY: Good afternoon, Your Honor. Jacob
16 Braly on behalf of defendants.

17 What we seek here in this motion in limine is to
18 exclude testimony and evidence regarding the specific dollar
19 amount of proceeds that the NuVia founders received during
20 the NuVia acquisition. This evidence is irrelevant to the
21 claims at issue, and any potential relevance is
22 substantially outweighed by the likelihood of prejudice or
23 bias from a jury under 403.

24 To be clear, we are not seeking to exclude
25 evidence related to the acquisition price, to the fact that

1 the founders received compensation in the acquisition, or to
2 the fact that there is a bonus structure laid out and a term
3 sheet that was signed as part of the acquisition. All of
4 the reasons that ARM provides in their response are
5 satisfied without disclosing the actual proceeds that were
6 made by the NuVia founders who are nonparties to this
7 action. And including that information and introducing that
8 evidence into this case would only seek to inflame the jury.

9 To also address one of the issues that's raised
10 in ARM's response, they question whether a particular
11 milestone -- I think the last pending milestone payment was
12 paid out based on --

13 THE COURT: How much money are we talking about?

14 MR. BRALY: It is approximately 80 to \$100
15 million, Your Honor. Mr. Gulati in Exhibit 1A to our
16 opening brief provides a breakdown of the amount on pages
17 137 to 138, and describes both the stock transfer as well as
18 a cash payment and then, of course, there are milestone
19 payments as well.

20 THE COURT: Okay. Let me hear from the
21 plaintiff.

22 MS. DURIE: Thank you, Your Honor. Daralyn
23 Durie for ARM.

24 Evidence of the amount of money that the
25 founders stood to make by virtue of the acquisition is

1 highly relevant to their motivation for disregarding their
2 contractual obligations. And closing that transaction
3 notwithstanding the consent requirement and failing to get
4 consent, and then using the ARM technology that had been
5 developed at NuVia in order to speed product development at
6 Qualcomm and get the milestone payments that had been
7 promised to them. And I think the case law is quite clear
8 that evidence of the amount of money that a party stands to
9 gain is evidence of bias. And it shows their motivation for
10 engaging in the specific conduct that is at issue in this
11 case.

12 THE COURT: All right. I think I have heard
13 enough.

14 MS. DURIE: Thank you.

15 THE COURT: I am going to deny the motion. If
16 defendants -- I've already permitted defendants to use the
17 royalty rate to show motive and bias from plaintiff's part,
18 then plaintiff can also use Qualcomm's buyout figures to
19 show motive or bias of the NuVia folks.

20 Okay. Qualcomm's motion in limine number 2,
21 defendants seek to preclude ARM from making arguments about
22 its ALA program, ALAs generally unless it produces all of
23 its third-party ALAs without redactions. We had a little
24 bit of a discussion about this at the last hearing. I'm not
25 sure if I screwed that up. So I do need to understand

14:41:19 1 what's going on because plaintiff now seems to be saying
14:41:26 2 look, we're not going to use those, which I appreciate
14:41:30 3 because you didn't produce them, you shouldn't be able to
14:41:33 4 use them.

14:41:34 5 But what I'm not sure happens is instead it
14:41:37 6 seems like you're saying we're just going to have people
14:41:40 7 testify. Well, what are you going to have them testify?
14:41:43 8 Are you going to have them testify about things that they
14:41:45 9 need those documents to cross-examine them on, or are you
14:41:48 10 going to testify about stuff that you've already produced
14:41:52 11 discovery on? So that is what I need some help on.

14:41:55 12 MS. DURIE: Thank you. And the answer, Your
14:41:57 13 Honor, is the latter. So we will have witnesses describe at
14:42:03 14 a high level the ALA program, and that there are ALA's with
14:42:11 15 a number of different companies. That I think is not a
14:42:13 16 contested fact. We do not intend to put in any evidence
14:42:17 17 about the specific terms of specific agreements that would
14:42:22 18 implicate in any way any information that was redacted from
14:42:27 19 those agreements.

14:42:28 20 The only -- the reason that this evidence is
14:42:32 21 relevant is to show -- in part to show harm. Obviously the
14:42:38 22 details of that harm are for the remedies phase for a
14:42:43 23 specific performance, but Qualcomm has taken the position
14:42:46 24 that we need to show as an element of the breach of contract
14:42:50 25 claim harm from the breach.

14:42:51 1 THE COURT: And I agree with that.

14:42:52 2 MS. DURIE: Right. And so we intend to have
14:42:56 3 testimony both that ARM is harmed by the unlicensed use of
14:43:00 4 our technology by Qualcomm and not being compensated for
14:43:06 5 that use in the way that they believe they should have been,
14:43:10 6 and that there is harm generally to ARM from the unlicensed
14:43:15 7 use of its technology, this is not the only ALA.

14:43:19 8 THE COURT: But I need to know specifically what
14:43:23 9 you suggest someone is going to testify about because if
14:43:25 10 that person is going to say well, gosh, it affects our
14:43:30 11 ability to negotiate good prices on other ALA's, that seems
14:43:34 12 like something you should have produced.

14:43:36 13 MS. DURIE: I understand. We are not going to
14:43:39 14 have witness testimony that there has been any past
14:43:44 15 impairment in our ability to negotiate specific ALA terms
14:43:49 16 including rates. We do think that to the extent that
14:43:55 17 Qualcomm's conduct was blessed here and that Qualcomm was
14:44:00 18 ultimately permitted to use unlicensed technology, that that
14:44:06 19 would have negative consequences going forward, but we're
14:44:10 20 not going to put in any testimony --

14:44:13 21 THE COURT: How is that showing damages? That's
14:44:16 22 showing speculative stuff for the future. How is that
14:44:19 23 showing that you have been damaged by the breach?

14:44:22 24 MS. DURIE: I think there is exigent harm to the
14:44:26 25 licensing ecosystem, but I think for purposes of showing

14:44:30 1 harm as an element of the breach of contract claim, the fact
14:44:34 2 that our technology is being used in an unlicensed fashion
14:44:39 3 without compensation, without in our view adequate
14:44:42 4 compensation --

14:44:43 5 THE COURT: That one I understood. I understood
14:44:45 6 that one. I don't understand you saying and now we're going
14:44:50 7 to put someone up and he's not going to say we've already
14:44:53 8 been harmed because we couldn't negotiate better deals or
14:44:57 9 people were like you let Qualcomm get away with it, so we
14:45:03 10 can get away with paying less or something, you're not going
14:45:06 11 to do that and instead you want him to say well, it may
14:45:09 12 happen in the future, that doesn't seem like harm for a
14:45:12 13 breach of contract. That seems kind of speculative and
14:45:18 14 future.

14:45:18 15 MS. DURIE: I don't disagree that it is about
14:45:20 16 the future. It is about why this lawsuit is important to
14:45:23 17 ARM, it is about why ARM made the decision which was as I
14:45:28 18 understand it literally unprecedented to sue one of its
14:45:32 19 licensees for the unlicensed use of its technology.

14:45:37 20 I agree that is not what we will be relying on,
14:45:40 21 it is the predicate for a determination of harm as an
14:45:44 22 element of a breach of contract claim, I believe that is the
14:45:47 23 harm that will be specific from the unlicensed use of this
14:45:50 24 technology.

14:45:50 25 THE COURT: Let me ask you a question because it

1 sort of your explanation kind of raised this which is let's
2 say you go before the jury and the jury says there was a
3 breach, and the damage, there was damage and loss of
4 reputation, something like that. Okay? Something that's
5 damages, but that is sufficient to show damages for purposes
6 of making out a breach of contract claim. And then you come
7 to me and you've already just said part of your damage may
8 be that you're not compensated adequately for the breach,
9 for the use of our technology, so it's using your technology
10 but not compensating you adequately.

11 So let's just say after I hear you out on that I
12 say it doesn't seem to me that there is no adequate monetary
13 relief. What happens because there has been no request for
14 damages, and if I don't give you specific performance but
15 there is a breach, where are we?

16 MS. DURIE: So the Court has the power in equity
17 to make awards incidental to an equitable request for
18 specific performance.

19 THE COURT: Did you ask for that in the pretrial
20 order?

21 MS. DURIE: We asked for that in the pleadings
22 and I believe it is in the pretrial order as well.

23 I do want to make clear that what I have been
24 talking about is harm as an element of a breach of contract
25 claim as distinct from damages.

14:47:29 1 THE COURT: I understand. But if you're going
14:47:31 2 to convince me -- if you want to tell the jury that our harm
14:47:36 3 is that we haven't been adequately compensated, I can't
14:47:41 4 pretend that I didn't hear that. Compensation sounds
14:47:44 5 money-ish.

14:47:45 6 MS. DURIE: I understand, and that is an element
14:47:46 7 of harm and I understand Your Honor's point. So the answer
14:47:49 8 to your question I think is remedies that are incidental to
14:47:54 9 specific performance.

14:47:55 10 THE COURT: All right.

14:47:56 11 MS. DURIE: Thank you.

14:47:56 12 THE COURT: Mr. Blumenfeld, did we help with
14:47:59 13 some of that? So they're not going to put in ALA's, they're
14:48:04 14 not going to testify that anything -- that there was
14:48:10 15 anything in the past where they -- their negotiations or
14:48:13 16 their ALA's were somehow impacted, and that's damages. I'm
14:48:21 17 not sure I'm going to let them put in something speculative
14:48:25 18 about the future, while maybe this will happen, maybe it
14:48:29 19 won't. So that leaves us with an argument that they're not
14:48:35 20 being adequately compensated for their -- for the alleged
14:48:41 21 breach. That seems like it's outside of this motion in
14:48:45 22 limine. So what is left of the motion in limine that I need
14:48:49 23 to address?

14:48:51 24 MR. BLUMENFELD: So a couple of things, Your
14:48:53 25 Honor, and I want to swing back to the damages issue that

14:48:55 1 you raised with Ms. Durie. I don't think it's correct that
14:49:02 2 all they intend to do is call some executives and say oh,
14:49:06 3 there may be some harm to us in the future which Your Honor
14:49:11 4 has said you haven't decided whether you will let them do
14:49:15 5 that or not. This came up a little bit during summary
14:49:18 6 judgment where they put in a declaration from two of the
14:49:20 7 executives. In fact, if you read their MIL response it
14:49:24 8 specifically says --

14:49:25 9 THE COURT: That caught my attention in the MIL,
14:49:29 10 we're going to have somebody testify and I'm like okay,
14:49:32 11 about what.

14:49:33 12 MR. BLUMENFELD: It says about royalties that
14:49:36 13 have been decreased. That doesn't sound like the future,
14:49:38 14 that sounds like --

14:49:39 15 THE COURT: I understand, but we've now had a
14:49:44 16 representation that suggest that's not going to happen,
14:49:46 17 unless the royalties that have been decreased means that
14:49:49 18 they're not being paid, they're Qualcomm or NuVia royalties
14:49:55 19 that they're not getting paid.

14:49:56 20 MR. BLUMENFELD: Right. If I could hand up one
14:49:59 21 of the declarations they put in, this is a big part of our
14:50:02 22 concern. It's from Williamson. It came in in August, we
14:50:06 23 objected to it as part of the summary judgment proceedings
14:50:09 24 because it is speculative, and also because it does disclose
14:50:25 25 things or argues things that we didn't get discovery of

1 because we didn't get the ALA's in for other reasons. But
2 if you look at Mr. Williamson's declaration, and he is
3 listed as a trial witness, so he's senior vice-president and
4 general manager, and he says in paragraph 6 that the
5 unlicensed use of ARM's technology has caused multiple harms
6 to ARM. And then he goes on to explain that, and in
7 paragraph 7, he says based on my experience at ARM and
8 marketing and business roles since 2015, the industry's
9 perception of ARM's reputation and its ability to protect
10 its intellectual property impacts ARM's contracts with its
11 licensees, for example, it affects the terms that ARM's
12 licensees are willing to accept, their proposals during
13 negotiations, their willingness to comply with those issues.
14 Terms that may be impacted include that products are
15 licensed financial terms, scope of license technology, I
16 don't know how I'm supposed to be able to cross-examine him
17 on these things happen when I'm talking to our licensees, by
18 the way, you don't have the licenses so you can't use them
19 to cross-examine me --

20 THE COURT: Hold on. Let me ask. Ms. Durie, I
21 would have thought based on our representations you weren't
22 planning to have him do that because I kind of agree,
23 Mr. Blumenfeld can't just say --

24 MS. DURIE: That is correct, we are not going to
25 say that there have been any such impacts to date.

14:52:06 1 THE COURT: But you want him to say but there
14:52:11 2 will be.

14:52:12 3 MS. DURIE: I would like for him to be able to
14:52:15 4 say that one of the reasons that ARM brought this case is
14:52:20 5 because its licensee ecosystem is extremely important to it
14:52:28 6 and it is very important to ARM as an IP licensing entity
14:52:32 7 that its licensees respect its intellectual property. And
14:52:38 8 that in ARM's view, if Qualcomm were able to use ARM
14:52:42 9 technology in an unlicensed fashion, that could have very
14:52:46 10 severe downstream consequences for ARM. I don't expect
14:52:50 11 anyone to spend a long time belaboring the point.

14:52:53 12 I think at that high level, they are -- Qualcomm
14:52:57 13 has said that they are going to try to suggest that ARM's
14:53:01 14 reasons for refusing to consent and bringing the case was
14:53:06 15 because it wanted to get rid of the Qualcomm ALA. Our
14:53:10 16 response to that is to say no, that is not true, the reason
14:53:14 17 that we are here is not because we want to get rid of the
14:53:17 18 Qualcomm ALA, the reason that we are here is because
14:53:20 19 Qualcomm is using our technology in an unlicensed fashion
14:53:23 20 and that is important to us.

14:53:24 21 But we don't intend to belabor the point and we
14:53:28 22 do not intend to make any argument that there has been any
14:53:31 23 specific effect in any specific license agreement that would
14:53:34 24 give rise to the need to cross-examine on that.

14:53:38 25 THE COURT: So with that --

14:53:40 1 MR. BLUMENFELD: Your Honor, if you go on to --
14:53:42 2 I want to respond also to her point about motivation, how it
14:53:46 3 is their motivation. The suit gets in after, what Mr. Olson
14:53:50 4 said, after our motivation.

14:53:52 5 THE COURT: I know. Well, you are going to talk
14:53:55 6 about their motivation to sue, that's all I heard over here
14:53:58 7 is they're suing us because they want more money so I can
14:54:02 8 sort of see why they get to respond and say no, we're not
14:54:05 9 suing them because we want more money, we're suing them
14:54:09 10 because this is harmful to our business model.

14:54:12 11 MR. BLUMENFELD: Well, we will get to that
14:54:15 12 undoubtedly when things come up at trial, but on the
14:54:18 13 specific things that Ms. Durie said about what they're going
14:54:22 14 to do, if you turn to paragraph 11 and then paragraph 13 of
14:54:27 15 Mr. Williamson's declaration, he says he --

14:54:30 16 THE COURT: Yeah, let's just check before you
14:54:33 17 tell me, are you going -- this seems like past stuff, since
14:54:38 18 June people have contacted me and I have been damaged. So
14:54:43 19 we need -- you're not going to put this in.

14:54:46 20 MS. DURIE: That's correct, Your Honor.

14:54:47 21 THE COURT: Okay. So that was paragraph 11.

14:54:50 22 MS. DURIE: Paragraph 11, that's right.

14:54:52 23 THE COURT: And then --

14:54:53 24 MS. DURIE: I want to be clear, we're talking
14:54:55 25 about the phase in front of the jury, obviously specific

1 performance is a separate question and we'll address that at
2 a separate time in front of Your Honor.

3 THE COURT: We can do that, I'm just saying the
4 extent that you want him to say I have been contacted by
5 people and our agreements are suffering, I would have
6 expected that all of that underlying stuff be produced, and
7 that you're not just going to have him get up there and say
8 it and leave Mr. Blumenfeld to say I don't know if that's
9 true or not. So you can ask again to put it in if there is
10 a bench trial phase, but I still in a bench trial require
11 you to disclose stuff during discovery.

12 All right. What about paragraph 12, did you
13 have a problem with paragraph 12, Mr. Blumenfeld? This is
14 -- that's different, that's Qualcomm's position as to what's
15 licensed.

16 MR. BLUMENFELD: It's 13, that's the other
17 issue. But on this entire subject, I don't -- so they put
18 in a declaration saying I have talked to our partners, I
19 have talked to our licensees, here is what I have learned
20 from them. They say that in the declaration. They're not
21 going to do that at trial. I don't know how he can get on
22 the stand and just say but this is going to happen.

23 THE COURT: And I haven't quite gotten through
24 that. I understand that concern. I understand that
25 concern. And I'm not -- but I guess what I'm thinking is I

14:56:33 1 need to understand more of what he's going to say, right?
14:56:37 2 Like, why can't he get up there and say this is our whole
14:56:41 3 business model, our business model is we licensed
14:56:45 4 technology, and you know, if you're going to be out there --
14:56:47 5 and we think we have great technology. But it's important
14:56:50 6 to us that people respect our licenses because if people
14:56:54 7 don't respect our licenses, our business model is not worth
14:56:57 8 the paper that it's written on. Right?

14:56:59 9 MS. DURIE: Right.

14:56:59 10 THE COURT: And then he can say and our
14:57:05 11 perception is that Qualcomm or NuVia, or I know there is two
14:57:10 12 different parties, I don't know who I'm talking about at
14:57:12 13 this moment, but you don't have to tell me there is two
14:57:16 14 different parties, whoever is not respecting our licenses,
14:57:19 15 probably both, right, neither of them respected the license
14:57:22 16 according to the plaintiff. So that seems okay to me and
14:57:26 17 that's not speculative damages, that's saying it's important
14:57:30 18 to us that people respect it, and it's important to our
14:57:34 19 business model that people respect it, and they're not
14:57:37 20 respecting it. And you can say well, you don't have any
14:57:40 21 evidence that it actually had an impact, but why can't he
14:57:44 22 get up there and say, come on, we're a licensing company,
14:57:47 23 all we do is enter agreements and if we say everybody can
14:57:51 24 just kind of pooh pooh our agreements, you know, it doesn't
14:57:55 25 -- the jury can look at that and be like well, that sounds

14:57:58 1 bad.

14:58:00 2 MR. BLUMENFELD: So here is the problem with
14:58:02 3 that, and it goes to the question Your Honor raised with
14:58:05 4 Ms. Durie. How do I cross-examine him? Because, for
14:58:09 5 example, we know that they've entered into other licenses
14:58:13 6 since the termination of the NuVia license. We all know
14:58:17 7 about Apple and there are others they've entered into since
14:58:21 8 then. We don't have them, or we have them in redacted forms
14:58:26 9 that we don't know what the terms are. We went through that
14:58:30 10 back in March with the Google licenses where the terms are
14:58:33 11 totally redacted. So if he gets on the stand and says this
14:58:37 12 is going to affect our licensing program, it's going to
14:58:40 13 affect our ability to collect royalties, it's going to
14:58:43 14 affect people's willingness to take a license and all I can
14:58:46 15 say is well, people took licenses, right, and I don't have
14:58:51 16 those licenses and I can't cross-examine him on whether the
14:58:55 17 harm is real or whether it's just something he's making up
14:58:59 18 for the jury.

14:58:59 19 THE COURT: Let me ask Ms. Durie on that
14:59:02 20 specific point because that one seems --

14:59:04 21 MS. DURIE: So we're not arguing that there has
14:59:06 22 been any affect on any exigent license agreements because
14:59:11 23 the harm hasn't happened yet --

14:59:13 24 THE COURT: Hold on, hold on. If he's going to
14:59:16 25 get up there and say well, it's going to harm us in the

14:59:19 1 future and Mr. Blumenfeld could if he had the agreement say
14:59:23 2 good of you to say, but by the way, since this all happened,
14:59:28 3 you have entered into 89 license agreements and, in fact,
14:59:30 4 you got better terms than you ever had before, that's a
14:59:34 5 pretty good cross of him saying oh, it's going to now hurt
14:59:38 6 us.

14:59:39 7 MS. DURIE: So I disagree --

14:59:41 8 THE COURT: Well, I don't --

14:59:43 9 MS. DURIE: But the distinction, I want to draw
14:59:44 10 the distinction between what will happen as a consequence of
14:59:48 11 Qualcomm being allowed to use technology in an unlicensed
14:59:53 12 way without consequences --

14:59:55 13 THE COURT: Yes. According to you -- hold on.

14:59:58 14 MS. DURIE: Yes.

14:59:58 15 THE COURT: According to you, Qualcomm has been
15:00:01 16 allowed to do this.

15:00:03 17 MS. DURIE: Not yet. We're in court litigating
15:00:07 18 over that very issue. They have not gotten away with it.
15:00:11 19 They make -- if they were to get away with it, if this were
15:00:15 20 to not have a consequence, we would be harmed. But we are
15:00:18 21 not saying -- there has been no --

15:00:21 22 THE COURT: Now you're getting super
15:00:24 23 speculative. So the jury has to now assume that the damage
15:00:28 24 is that they find that there is a breach, but they can't
15:00:32 25 find that there is a breach unless there is damage. So I

15:00:35 1 can't -- that seemed wrong to me.

15:00:37 2 MS. DURIE: So let me be clear. The allegation
15:00:40 3 of harm for purposes of whether there was a breach is that
15:00:43 4 they are using our unlicensed technology and they are not
15:00:48 5 paying for it. That is harm. And that suffices to show
15:00:54 6 harm for purposes of a breach.

15:00:56 7 THE COURT: You know what, that's all I'm going
15:00:59 8 to let him say at trial. He cannot say -- no, he cannot say
15:01:02 9 and in the future, this is going to cause us problems if the
15:01:06 10 jury finds that there was a breach and this can all go and
15:01:11 11 they are allow to get away with it. He cannot say it.
15:01:14 12 Okay? He cannot say it. You can stop arguing it because
15:01:20 13 you did not produce -- you did not produce information that
15:01:26 14 would allow the defendants to fairly cross-examine your
15:01:31 15 witnesses because I get it, you're saying well, they didn't
15:01:36 16 get away with it until the jury finds they got away with it.
15:01:40 17 The fact is they're doing it now. There is no -- no, he
15:01:43 18 can't -- and so one, no, you didn't produce the documents.
15:01:47 19 Two, no, it seems awfully speculative to say we think that
15:01:52 20 at some point if the jury finds that there wasn't -- I don't
15:01:57 21 even know if the jury finds there was a breach or there
15:02:00 22 wasn't a breach that we're going to be harmed.

15:02:02 23 MS. DURIE: It's not the jury verdict. Let me
15:02:05 24 very be very clear, it's why we brought the lawsuit. If we
15:02:09 25 had allowed this conduct to go unchallenged, if we had

1 allowed Qualcomm to use our IP in an unlicensed fashion and
2 not take an action, that would have threatened our
3 ecosystem, the reason we brought --

4 THE COURT: There is a difference between saying
5 it will threaten our ecosystem and saying, and what that
6 means is we are going to be harmed in the future by people,
7 you know, everybody -- no one is going to respect our
8 licenses. It's one thing if he gets up there and says this
9 is our business model, we need people to respect our
10 licenses, they're not respecting our licenses, okay, I don't
11 know exactly what that establishes, but the jury I suppose
12 could fairly draw an inference from that. It's a very
13 different thing for him to say and by the way, we will be
14 harmed in the future, or we may be harmed in the future if
15 this is allowed.

16 MS. DURIE: May I just say in response to the
17 attack on our motive for bringing the lawsuit, which
18 Qualcomm intends to put at issue by saying we refused to
19 consent to try to get out from under the Qualcomm ALA, we
20 would like our witness to be able to say that's not why
21 we're here, the reason why we're here, why we brought the
22 lawsuit and why we are insisting on our rights is because we
23 are a licensing shop. If our technology is used in an
24 unlicensed fashion, that threatens our entire business model
25 and we're very concerned about what the consequences of that

15:03:43 1 would be. We're not saying we're harmed by that --

15:03:46 2 THE COURT: Yes, but the problem I have is --
15:03:49 3 and you can say that I'm talking about something different,
15:03:52 4 but I still think it's fair within the scope of
15:03:55 5 cross-examination, if your witness gets up there and says
15:03:58 6 all hell is going to break loose if people don't respect our
15:04:02 7 licenses, our business model is not worth the paper it's
15:04:05 8 written on, and Mr. Blumenfeld or Ms. Dunn or Ms. Nyrady or
15:04:10 9 whoever can't get up and say well, wait a second, everybody
15:04:15 10 knows that according to you, Qualcomm has not been
15:04:20 11 respecting our technology and has just been using it as you
15:04:22 12 say in an unlicensed manner and the sky has not fallen in,
15:04:28 13 in fact all of this other stuff has happened, the problem is
15:04:32 14 he can't say that or they can't say that because you didn't
15:04:35 15 produce the documents.

15:04:36 16 MS. DURIE: I would think, Your Honor, we could
15:04:38 17 arrive at a stipulation to solve that problem because that
15:04:40 18 is not the argument that we are making. We are saying if we
15:04:43 19 had not enforced our rights and just sat on the sidelines
15:04:48 20 and didn't take action to protect our intellectual property
15:04:52 21 and allowed the unlicensed use of our IP without
15:04:57 22 consequence, that is what would threaten our entire model,
15:05:00 23 not being here pursuing this litigation, but sitting on the
15:05:03 24 sidelines and not taking action.

15:05:05 25 If Qualcomm wants to cross-examine our witnesses

15:05:09 1 --

15:05:09 2 THE COURT: How are they supposed to say we
15:05:11 3 don't believe you, that's not true?

15:05:14 4 MS. DURIE: I think we could work out a
15:05:15 5 stipulation. If their goal is to be able to establish that
15:05:19 6 we are not contending there has been any such harm with
15:05:23 7 respect to the terms of license agreements that we were able
15:05:27 8 to negotiate in view of the fact that we did file a lawsuit,
15:05:31 9 we have no problem with that, and I think we could work out
15:05:34 10 a stipulation to that effect.

15:05:36 11 THE COURT: All right. This is what I am going
15:05:37 12 to do. You can't use the ALA. It sounds like you don't
15:05:41 13 want to use the ALA. And you can't use anything that's
15:05:44 14 happened to date, and it doesn't sound like you want to use
15:05:47 15 anything that's happened to date. So that I will rule on.
15:05:55 16 Whatever happens, see if you can come up with a stipulation
15:05:57 17 that will allow you to deal with it. If not, you can use
15:06:02 18 some of your trial time to argue the rest of this, whatever
15:06:05 19 is left of this motion to me.

15:06:07 20 MS. DURIE: Understood. Thank you, Your Honor.

15:06:09 21 THE COURT: But I understood the motion to be
15:06:14 22 that defendants seek to preclude ARM from making argument
15:06:17 23 about its ALA product program and so I guess to the extent
15:06:21 24 that we're talking about not specific agreements but the
15:06:26 25 program, then I -- let me know what's left of that motion.

15:06:34 1 MR. BLUMENFELD: I'm not sure, Your Honor, that
15:06:37 2 there is anything left that we need to deal with today. We
15:06:40 3 may well get into the issue of them putting Mr. Williamson,
15:06:44 4 Mr. Abby, Mr. Haas, their witnesses on to talk about -- to
15:06:49 5 create an impression that there is a parade of horrors
15:06:53 6 that are going to happen and if that does --

15:06:54 7 THE COURT: I understand. I understand. And
15:06:56 8 I'm not in any way precluding you from objecting to that, or
15:07:01 9 from raising that before the witnesses get on the stand and
15:07:04 10 asking for a proffer on what they're going to say on that so
15:07:08 11 we can address it.

15:07:09 12 MR. BLUMENFELD: Thank you.

15:07:09 13 If I can respond to the colloquy that you had on
15:07:12 14 damages, this is kind of an interesting issue for us. Back
15:07:15 15 when we were before you in March, you asked them whether
15:07:18 16 they were asserting a damages claim and they said no. They
15:07:23 17 left themselves open to possibly doing it later. They've
15:07:26 18 never given us a damages expert report. They've never given
15:07:29 19 us a disclosure of a damages theory. They haven't put --

15:07:33 20 THE COURT: How scary it must be that they want
15:07:37 21 me to figure it out.

15:07:39 22 MR. BLUMENFELD: But if you go to the pretrial
15:07:41 23 order, I don't know if you have it in front of you.

15:07:44 24 THE COURT: I can pull it up. Give me a second.

15:07:49 25 MR. BLUMENFELD: It's Exhibit 13 to the pretrial

15:07:51 1 order. It's in the pretrial order in a number of places.

15:08:02 2 THE COURT: Okay.

15:08:03 3 MR. BLUMENFELD: Starting at the bottom of
15:08:05 4 page 16, paragraph 120(b).

15:08:07 5 THE COURT: Hold on, my exhibit -- I don't know
15:08:11 6 what this is.

15:08:15 7 MR. BLUMENFELD: It's Exhibit 13 which is
15:08:17 8 plaintiff's statement of intended proof.

15:08:31 9 THE COURT: Okay. What paragraph?

15:08:33 10 MR. BLUMENFELD: At the very bottom of the page
15:08:34 11 they list the relief they're seeking. And paragraph B says
15:08:39 12 --

15:08:39 13 THE COURT: I'm sorry, which page?

15:08:41 14 MR. BLUMENFELD: Page 16. Sorry, Your Honor.

15:08:44 15 Says an order requiring defendants to pay royalties, an
15:08:50 16 accounting pre and post-trial judgment interest,
15:08:53 17 supplemental damages, incidental damages and/or attorney's
15:08:58 18 fees and costs and other monetary compensation as an
15:09:02 19 equitable remedy. And they have never disclosed this.

15:09:06 20 Their position they've always taken is it can't be
15:09:09 21 calculated. Now they're saying oh, we're going to seek
15:09:13 22 damages, including I don't know what other monetary
15:09:16 23 compensation means. If you look up damages in the legal
15:09:20 24 dictionary, it probably says monetary compensation. If they
15:09:24 25 were going to put forth some kind of a damages theory, now I

1 don't think they have a right to do it later, we may end up
2 briefing that, but we're going to have a trial
3 December 16th, I would have thought that was the time to do
4 it and they didn't do it. I don't think they get to come in
5 and say oh, if we win, then we'll put in the evidence that
6 we didn't give you before the jury trial. I wanted to bring
7 that to your attention, they're not going to try to put in a
8 damages case on December 16th --

9 THE COURT: No. And presumably when I look at
10 any equitable relief that's requested I can either see what
11 they're asking you to do and come up with a number, not
12 withstanding that they told me monetary damages are not --
13 or I can say that it's been waived or some other equitable
14 reason I don't have to do that at their request because of
15 the positions that they have taken in this case.

16 But those are all issues that I don't think
17 we're going to address today.

18 MR. BLUMENFELD: And we will undoubtedly be
19 taking the position that they can't raise that.

20 THE COURT: Okay.

21 MS. DUNN: Your Honor, on the list of things
22 that can't be addressed today, but based on the
23 representation of the plaintiffs of what they will not be
24 arguing with respect to harm and their acknowledgment that
25 harm is an element, I don't know that just alleging a

breach, which is basically what they're saying they're going to do and having that suffice to harm is legally sufficient.

THE COURT: Well, I think that there is enough here to allow me to let them go to a jury and assert that they have suffered harm. So you're not getting summary judgment today. I understand what you're saying, but I think in terms of saying things like reputational harm or whatever, that there is enough that they can go to a jury. So that's where I am on that.

MS. DUNN: Okay. I just want to make sure I put the argument on the record because I don't know that under the case law that that is true.

THE COURT: Then appeal my denial of the summary judgment that you just made right here.

Okay. Now, other issues in the pretrial order. I think that's all the motions in limine and Daubert -- Daubert's I haven't given you my order yet, the one I had a question on.

Okay. So then other issues. The pending motions, I don't think there are any pending motions here except for the Daubert's, which I'll get you out soon. Summary judgment I have resolved. I'm denying it to the extent that you don't think I already have. And there was a motion to compel or something, and I'm not granting that either.

15:12:37 1 Okay. Paragraph 11, settlement efforts. I know
15:12:44 2 that I ordered you all to engage in discussions. I know
15:12:50 3 it's not time yet for you to get back to me, but where are
15:12:54 4 we?

15:12:56 5 MR. OLSON: Your Honor, the CEOs of ARM and
15:13:00 6 Qualcomm met on November 14th for as I understand it about
15:13:07 7 two hours with the general counsels as well. Following that
15:13:13 8 executives are having discussions this week and we will be
15:13:17 9 more than happy to provide a follow-up on November 27th as
15:13:23 10 previously ordered. I don't have more either as to
15:13:27 11 substance or otherwise that I can say.

15:13:29 12 THE COURT: That's okay. I don't need the
15:13:31 13 substance. Where did they meet?

15:13:34 14 MR. OLSON: They met in Palo Alto, actually in
15:13:39 15 Morrison Foerster's office, by agreement of the parties, the
15:13:42 16 outside counsel were not present.

15:13:43 17 THE COURT: Okay. Anything that the defendants
15:13:46 18 need to add to that?

15:13:47 19 MS. DUNN: No, Your Honor.

15:13:48 20 THE COURT: All right. I expect those to
15:13:50 21 continue.

15:13:51 22 All right. Paragraph 13, plaintiff's issues of
15:13:59 23 fact on whether defendants have been unjustly enriched and
15:14:05 24 ARM is entitled to royalties or disgorgement.

15:14:20 25 MS. DURIE: I apologize, Your Honor. Your Honor

15:14:22 1 is on --

15:14:23 2 THE COURT: Paragraph 13 is plaintiff's issues
15:14:26 3 of fact. When we looked through those in Exhibit 2, we had
15:14:31 4 questions about the assertion of unjust enrichment, which I
15:14:37 5 don't recall ever hearing about before, or disgorgement.

15:14:43 6 MS. DURIE: I think the short answer is that
15:14:46 7 those would be issues, equitable issues for the --

15:14:52 8 THE COURT: When did you think we were going to
15:14:54 9 deal with these equitable issues?

15:14:57 10 MS. DURIE: I think, Your Honor, that the
15:14:59 11 parties at least are in agreement that it would make sense
15:15:04 12 following the jury verdict to set a further date to appear
15:15:08 13 in front of Your Honor and present any additional evidence
15:15:13 14 that bore on the remedies question.

15:15:35 15 THE COURT: Okay.

15:15:40 16 MS. DUNN: Your Honor, our position would be as
15:15:42 17 Mr. Blumenfeld said, these desired remedies were not pled.

15:15:58 18 THE COURT: Okay. I don't know what I'm
15:16:00 19 supposed to do. I have no idea if they were pled. Nobody
15:16:06 20 -- what am I supposed to do here? When is it that you all
15:16:11 21 think I'm going to deal with this? Like you're just going
15:16:15 22 to what -- first of all, if we need to deal with the
15:16:19 23 equitable issues, I typically deal with equitable issues in
15:16:23 24 the evenings while the jury is out during the time that
15:16:25 25 we're having a trial. So you need to figure out how that

1 would work in this case. And then if there is something
2 where you say well, we need the jury verdict in order to do
3 it, then how much time do you think you're going to need?
4 Because we ought to schedule it right now. We can do it
5 right now. So normally I would say we'll hear any equitable
6 issues in the evening after the jury leaves. How's that
7 work?

8 MS. DUNN: Your Honor, I think what the parties
9 had discussed, which I don't know if this is what the Court
10 is talking about, when it talks about equitable issues, that
11 if there is a jury verdict, there would be a remedies phase
12 to discuss specific performance.

13 THE COURT: Yes. But assume that there might be
14 other equitable issues, like I find based on the letters
15 that you're going to submit that unclean hands doesn't go to
16 the jury, it comes to me, that I allow for some of these
17 other disgorgement, whatever, I don't know, can we then do
18 those issues -- if the only issue is specific performance
19 that requires the jury, any other issues that I determine to
20 be equitable based on these letters, can we do those in the
21 evenings after the jury leaves?

22 MS. DUNN: Your Honor, I think -- I have no
23 objection to that, but I think part of what's going on here,
24 and the parties I'm sure are at fault for this, is there are
25 things in these filings that -- where there is not agreement

15:18:19 1 that there should be on a decision on them at all because
15:18:23 2 they weren't pled so that is an issue --

15:18:25 3 THE COURT: When did you think you were going to
15:18:28 4 raise that with me? Truly, I'm like lost, you keep raising
15:18:33 5 new stuff to me, so when did you think you were going to
15:18:37 6 deal with this?

15:18:38 7 MS. DUNN: Your Honor --

15:18:39 8 THE COURT: You're just going to wait until
15:18:42 9 what, I set a hearing in April and then you could brief some
15:18:45 10 more? No.

15:18:46 11 MS. DUNN: I understand.

15:18:46 12 THE COURT: No. You guys can't do this
15:18:49 13 piecemeal stuff. Okay? So what's your plan because this
15:18:54 14 all has to be done. You will have -- for equitable relief,
15:19:01 15 you have -- your options are the day after -- the evenings
15:19:05 16 after whatever, and then I have time on Thursday,
15:19:11 17 January 2nd, all day, and if necessary in the afternoon of
15:19:16 18 the 3rd. So those are our times when we can do these
15:19:21 19 things. Those are our times. Tell me what your proposal is
15:19:25 20 to figure out what we're deciding in those times.

15:19:29 21 MS. DUNN: Well, Your Honor, my proposal having
15:19:31 22 not consulted with the client on availability, but I'm not
15:19:35 23 going to make it anyway is to accept Your Honor's
15:19:38 24 January 2nd and 3rd time because that will also allow for us
15:19:43 25 to have a discussion with the other side about what should

15:19:47 1 not -- and potentially brief the Court on what does not have
15:19:51 2 to be decided at all because it was put into the PTO within
15:19:55 3 the last week.

15:19:56 4 THE COURT: So just so you know, I let my
15:20:00 5 chambers have off from the 23rd until the 1st. So when I
15:20:10 6 say I let them have off, I'm not making them deal with our
15:20:14 7 motions.

15:20:15 8 MS. DUNN: Understood.

15:20:16 9 THE COURT: So I need a motion, I need you to
15:20:18 10 tell me when --

15:20:19 11 MS. DUNN: We can confirm this by next week. I
15:20:23 12 think the question is -- you know, I want to give the Court
15:20:28 13 whatever room the Court wants. Nobody expects anybody here
15:20:31 14 to work between the 23rd and the 1st certainly, but I do
15:20:34 15 think we would like to brief the issues of what have been
15:20:37 16 put in here as sort of a last minute that were not pled that
15:20:40 17 have not been litigated so the Court does not have to decide
15:20:44 18 those issues at night during a trial, our proposal --

15:20:47 19 THE COURT: This is what I am going to do. You
15:20:50 20 can Friday, you can have three pages to tell me what issues
15:20:56 21 you think -- actually, let's just start with this so I don't
15:21:01 22 have to wait until Friday. What issues do you think are
15:21:04 23 going to the jury?

15:21:08 24 Plaintiff?

15:21:09 25 MS. DURIE: ARM's claim for breach of the NuVia

15:21:17 1 ALA by NuVia and Qualcomm. And NuVia and Qualcomm's
15:21:27 2 defenses to that breach.

15:21:29 3 THE COURT: Okay. Don't get to defenses. Your
15:21:33 4 only claim is breach?

15:21:34 5 MS. DURIE: Correct.

15:21:35 6 THE COURT: You say NuVia breached by not
15:21:38 7 getting your approval when it did the triangular merger,
15:21:43 8 right?

15:21:44 9 MS. DURIE: Yes.

15:21:44 10 THE COURT: And that somehow you were damaged
15:21:49 11 and then Qualcomm breached by using that technology in an
15:21:54 12 unlicensed manner and I guess it was -- somebody said it was
15:21:57 13 supposed to be destroyed.

15:21:59 14 MS. DURIE: Both NuVia and Qualcomm breached in
15:22:02 15 our view by closing the transaction.

15:22:05 16 THE COURT: Okay.

15:22:05 17 MS. DURIE: And continuing to use ARM
15:22:08 18 confidential --

15:22:08 19 THE COURT: Okay. That's your claim. What
15:22:10 20 defenses, whether I agree or not, but tell me what defenses
15:22:16 21 you believe should be going to the jury even though
15:22:19 22 understand I may say some of them are equitable.

15:22:23 23 MS. DUNN: First of all, the 16.3 breach was not
15:22:26 24 pled, and is also -- there is no remedy for it that the
15:22:33 25 plaintiffs have sought so our view what is going to the jury

1 is the breach of 15.1 which is the termination provision,
2 that is as to both NuVia and Qualcomm.

3 And then with respect to our defenses, we
4 believe that it is going to the jury whether we proved that
5 our CPUs are licensed under Qualcomm's ALA and whether we
6 proved that ARM's statements that the Qualcomm ALA expires
7 in 2025 are false. And those were our DJ claims.

8 But this is one reason I thought the Court might
9 like briefing is that there is some -- the idea that the
10 16.3 is now a breach claim with a remedy that was pled is
11 not true.

12 THE COURT: Yes. But where does unclean hands
13 fall into this? You're just telling me what you think are
14 issues. I don't know what the claims are. Like they have a
15 breach of contract claim, you have a we didn't breach
16 defense. I don't know what these other things are. You
17 have a license defense. Is that a license defense to a
18 breach of contract that you didn't breach? I don't know.

19 MS. DUNN: Yeah, Your Honor, is the answer. And
20 I mean, on our verdict form we have the 15.1 breach between
21 -- as to Qualcomm and as to NuVia, both companies. We have
22 a question that gets to unclean hands, which is whether we
23 have proven that ARM acted towards Qualcomm in such a way
24 that ARM -- that the relief it seeks should be denied, the
25 relief that it seeks. We have a question --

15:24:22 1 THE COURT: Hold on. Originally you said 15.1,
15:24:26 2 CPUs licensed under the Qualcomm and ARM's statements are
15:24:30 3 false.

15:24:30 4 MS. DUNN: I apologize.

15:24:32 5 THE COURT: I don't know, now you're talking
15:24:34 6 about unclean hands based on facts that I don't know what
15:24:38 7 the basis for those are. These are the basis of unclean
15:24:41 8 hands or unclean hands is somehow different and I find it
15:24:44 9 really kind of frustrating that we're at a pretrial
15:24:48 10 conference and you guys haven't talked about what's in this
15:24:51 11 case. And to the extent that they raised issues that are in
15:24:54 12 the pretrial order that you said they didn't raise, I don't
15:24:57 13 know what you were keeping it a secret for.

15:24:59 14 MS. DUNN: I understand, Your Honor.

15:25:01 15 THE COURT: I still -- I'm lost. 15.1.

15:25:03 16 MS. DUNN: So with respect to the defenses that
15:25:08 17 we believe go to the jury, unclean hands.

15:25:13 18 THE COURT: Based on?

15:25:14 19 MS. DUNN: Factually based on or based on?

15:25:17 20 THE COURT: What is the basis of your unclean
15:25:19 21 hands defense? What did they do?

15:25:22 22 MS. DUNN: First of all, they waited a year to
15:25:28 23 terminate. During that year they used the threat of
15:25:32 24 termination to try to negotiate up their royalty rates.
15:25:38 25 They interfered with our customers. They told Samsung that

1 our license would expire. They -- I won't go into all the
2 internal documents that we have from ARM, but it's clear
3 what was going on, that they slow rolled the negotiations on
4 purpose. So there is a whole host of unclean hands facts
5 that support this defense.

6 Some of those facts similarly support the waiver
7 defense because ARM acted as if -- I should say as an
8 antecedent matter. Qualcomm even before the merger closed
9 or the acquisition closed alerted ARM that it would be
10 preceding under the Qualcomm ALA with the NuVia employees,
11 it was very clear, and that was a year before the contract
12 was terminated.

13 THE COURT: Okay. Okay. Fine, unclean hands
14 based on whatever you just said. Waiver based on the fact
15 that they waited a year. What else do you think is going to
16 the jury?

17 MS. DUNN: And then that we are licensed under
18 our license agreement. And then our declaratory judgment
19 request about ARM's statements to our license -- to our
20 customer that our license would expire is false.

21 THE COURT: That's it?

22 MS. DUNN: I believe that's it, unless somebody
23 here tells me I'm forgetting something. I'm sorry, ARM's
24 failure to perform under the NuVia ALA, which we would
25 elicit evidence of that as a defense. Obviously we're not

bringing that as a separate claim.

THE COURT: Okay. So you are then on Friday going to submit to me three pages that tell me why unclear hands and waiver and anything else that may be equitable is not equitable. And you can have until the end of the day Monday to respond, plaintiff. And then what other equitable issues would there be based on any possible decision by the jury?

MS. DURIE: I think the additional issues are all remedies issues. We do believe that we have pled a request both for specific performance and for various other categories of relief incidental to that request. But all of those would be remedies issues for the Court.

THE COURT: Okay. So then what we're going to do is you guys need to talk and you need to identify to them what you think has not been properly pleaded and then when they tell you what those things are, you can send me three pages that say no, here they're pleaded.

MS. DURIE: Right.

THE COURT: Okay. And then you can respond by the end of the day Monday to that.

MS. DUNN: Understood, Your Honor. Thank you.

THE COURT: And I am toying with the idea depending on whether this is -- many of these issues are, in fact, equitable that we may just have a four-day jury trial

1 and one of those days will be equitable issues. But it may
2 also be that I deal with the other equitable issues during
3 the trial and then we can deal with any specific performance
4 issues on the 2nd. But I need to figure that out once I see
5 your submissions.

6 Okay. Exhibits. There was something that I saw
7 that suggested somebody wanted to submit an edited exhibit
8 list or something.

9 MS. YING: Your Honor, the parties have
10 continued to confer since the filing of the PTO on the 13th
11 and I believe both sides have updates to their exhibit lists
12 as well as their deposition designations that they have
13 exchanged with each other so we would just need to get those
14 into the version of the PTO that Your Honor has, whether we
15 do that via a revised --

16 THE COURT: Why weren't they included? I mean,
17 it's a pretrial order. I don't usually allow for -- I mean,
18 why -- it's kind of a waste of my time to have to deal with
19 a pretrial order and then we have like other little bits of
20 it in a different portion of the record. So why weren't --
21 why wasn't this done before?

22 MS. YING: I think, Your Honor, to be frank I
23 think the parties have continued to confer on outstanding
24 issues.

25 THE COURT: But conferring suggests that you

15:30:58 1 would lessen the exhibits and the deposition designations.
15:31:01 2 I'm getting the feeling that you're adding.

15:31:04 3 MS. YING: I believe there may have been
15:31:07 4 additions as well as deletions. I can't speak to both of
15:31:10 5 them.

15:31:10 6 THE COURT: Why do I let that happen?

15:31:13 7 MS. YING: I think, Your Honor, we've made these
15:31:16 8 edits in good faith and have been agreed upon, so I think,
15:31:20 9 you know, the parties would like to submit that universe to
15:31:25 10 Your Honor if Your Honor would allow us to do so. And I'll
15:31:30 11 let anyone from ARM speak as well, I think Mr. --

15:31:34 12 THE COURT: I don't understand. It's not
15:31:36 13 supposed to be a piecemeal thing. What are you doing? Why
15:31:40 14 wasn't it in there first? What's the big pause?

15:31:45 15 MR. HUTTINGER: I think in large part the
15:31:46 16 changes to the exhibit list are things like fixing,
15:31:50 17 correcting end Bates numbers and are not terribly
15:31:54 18 substantial.

15:31:55 19 THE COURT: You don't really need to do it, do
15:31:56 20 you, if you all agree? What's the big deal?

15:32:00 21 MR. HUTTINGER: There are a handful of
15:32:01 22 supplemental exhibits.

15:32:02 23 THE COURT: Why weren't they included?

15:32:04 24 MS. YING: I think what happened to be frank, I
15:32:06 25 think the parties were looking at -- for example, I know

15:32:09 1 there are some things, some of the expert reports they were
15:32:11 2 trying to figure out if they had the correct date ranges and
15:32:15 3 we may or may not have realized paper copies of things were
15:32:18 4 sent. There were continuing discussion about these that we
15:32:22 5 flagged to basically sort out after the 13th whether the PTO
15:32:26 6 was due and it was not intended to --

15:32:29 7 THE COURT: No, the problem I have is then when
15:32:31 8 I have to look at a pretrial order and there is an issue, I
15:32:35 9 have to go find other portions, that's why I expect people
15:32:39 10 to do what they need to do and give me a pretrial order that
15:32:42 11 is the universe of what they intend to include. And I don't
15:32:49 12 want a -- if you're going to say give me another 900 page
15:32:53 13 pretrial order if that was going to be the suggestion.

15:32:55 14 MS. DURIE: I was going to suggest that we
15:32:58 15 submit an amended pretrial order that replaced this with the
15:33:03 16 additional exhibits.

15:33:06 17 THE COURT: Yeah, that's an additional 900 page
15:33:09 18 document which I could live without. Thanks. So I am not
15:33:13 19 hearing that this is anything that's terribly important, so
15:33:18 20 is it important? And if so, tell me what these things are
15:33:22 21 that are so important now that you need them but they
15:33:25 22 weren't so important that you cared enough to put them in
15:33:28 23 originally.

15:33:30 24 MS. NYARADY: Your Honor, I want to say with
15:33:32 25 respect to the deposition designations, the additions there

1 have to do with the fact that the parties conferred after
2 the filing of the pretrial order in an effort to whittle
3 down the witness list and some of the will calls moved off,
4 some of the may calls moved off necessitating some of the
5 additional designations for people that perhaps are no
6 longer coming to trial. And there was a paragraph in the
7 pretrial order that I think is in dispute that relates to
8 this as well in terms of this, so it would be important for
9 us to update those designations, but it's an effort by the
10 parties to streamline who is really being called live.

11 THE COURT: That's what I needed. Thank you.
12 You may do that.

13 MS. NYARADY: Thank you, Your Honor.

14 THE COURT: You may do that. But I don't want a
15 whole new pretrial order and what you need to do is you need
16 to work with Ms. Welham to have those things added to or
17 swapped out in the pretrial order because I don't want parts
18 of it in all different places.

19 MS. NYARADY: Thank you, Your Honor.
20 Understood.

21 THE COURT: Okay. Paragraph 39. Documents.
22 Defendant, can you help me understand what the point of your
23 proposal was. I don't know that I care, but I don't really
24 understand what the point is.

25 MS. NYARADY: Yes, Your Honor. Thank you. So

1 this, I think as a practical matter it probably has no
2 impact, but we did not want to have a stipulation in the
3 pretrial order that said that documents that were produced
4 by a party are deemed to be business records of that party
5 because we produced all of the documents with a Qualcomm
6 Bates number. Some of the documents are NuVia business
7 records, some of them are Qualcomm business records, so we
8 were trying -- and I appreciate that maybe the language
9 didn't serve its purpose if it's not understandable, but I
10 was trying to get across that it is a business record for
11 the party that created the document. So the requirements of
12 being created in the regular course of business activity and
13 that they were kept by the business, we wanted to make it
14 clear that the NuVia documents are not Qualcomm business
15 records and vice versa. I think where this really comes up
16 is more in a 602 issue depending on which witness they try
17 to use it with which document was created. I don't think it
18 impacts how the trial is going to go, but I just wanted to
19 be clear on the record that we can't enter into a
20 stipulation that every document produced with a Qualcomm
21 Bates number in the litigation as Qualcomm business record.

22 THE COURT: It could have come in NuVia.

23 MS. NYARADY: Correct.

24 THE COURT: What's the problem with that?

25 MS. DURIE: My concern is we didn't understand

1 what the practical important of this was. Qualcomm produced
2 all of these documents so they were all maintained by
3 Qualcomm. We do understand that some of them were created
4 at NuVia. It wasn't clear to us what distinction the
5 defendants were trying to draw or for what purpose.

6 THE COURT: Did you ask?

7 MS. DURIE: I did not personally participate in
8 the meet and confer.

9 THE COURT: I mean, that's silly. Right? You
10 submit this to me, we had to spend our time looking at this,
11 we had to spend our time trying to figure out what this
12 meant and you don't even know, you don't even bother to talk
13 to each other. That's just kind of -- that's not very
14 respectful of anyone's time but your own.

15 MS. NYARADY: Your Honor, we did discuss this at
16 the meet and confer. I was on the meet and confer. I want
17 to say what I told you, I told ARM, I want to make that
18 clear. We are not trying to disrespect the Court's time. I
19 made it clear that I thought there was no practical impact
20 to the trial. We were preserving because we had different
21 parties and different business records.

22 THE COURT: All right. Defendants' proposals
23 are accepted.

24 Paragraph 48 on demonstratives.

25 MS. DURIE: We have resolved that one, Your

15:38:13 1 Honor.

15:38:13 2 THE COURT: There is no dispute?

15:38:15 3 MS. DURIE: Correct.

15:38:15 4 THE COURT: You say absent agreement
15:38:17 5 demonstratives are illustrative. I'm saying they're not
15:38:21 6 evidence even if you agree to it.

15:38:23 7 MS. DURIE: Understood.

15:38:25 8 THE COURT: Paragraph 51 and 52 on witness
15:38:32 9 lists. Is there an issue on this one?

15:38:41 10 MR. FUNG: Yes, Your Honor. Nicholas Fung on
15:38:46 11 behalf of plaintiff, ARM. The first issue, we object to
15:38:49 12 Qualcomm's identification of a witness named Nick Jones.
15:38:53 13 Nick Jones was never included on any of Qualcomm's initial
15:38:56 14 disclosures. We found out for the first time a few weeks
15:38:59 15 ago that Qualcomm intended to call him at trial when they
15:39:02 16 added him to their initial witness list. We spoke to
15:39:04 17 Qualcomm about this and they pointed us to an interrogatory
15:39:08 18 response, a supplemental interrogatory response where
15:39:11 19 Mr. Jones was listed along with seven other witnesses as
15:39:14 20 having knowledge in response to that interrogatory. That's
15:39:16 21 not sufficient at all to provide us notice that they were
15:39:19 22 calling Mr. Jones at trial.

15:39:21 23 There is case law supporting the proposition
15:39:23 24 that simply mentioning a witness in a rog response does not
15:39:27 25 provide notice that that witness be called at trial. We

1 believe Mr. Jones should be precluded from testifying. So
2 that's one of the issues.

3 The other issue is Qualcomm has objected to ten
4 of our witnesses, or may call witnesses because they were
5 never deposed. And we narrowed this dispute quite a bit on
6 Monday. We've agreed not to call four of those ten
7 witnesses and today we can agree not to call five of the
8 remaining six of the witnesses. We would like to reserve
9 our ability to call Mr. Jeff Defilippi. Mr. Defilippi was
10 disclosed on our initial disclosures. Qualcomm did have a
11 chance to depose him during fact discovery, they chose not
12 to, and they still oppose Mr. Defilippi. They requested a
13 deposition of him. We don't think they're entitled to it.

14 THE COURT: When did they ask for a deposition
15 of him?

16 MR. FUNG: During the pretrial order.

17 THE COURT: But never did before?

18 MR. FUNG: No Your Honor.

19 THE COURT: It was in your Rule 26 disclosures?

20 MR. FUNG: Yes, the third amended Rule 26
21 disclosers. With that being said to moot this dispute, if
22 Qualcomm would agree not to call Mr. Jones, we will agree
23 not to call Mr. Defilippi, but if they intend to present
24 Mr. Jones, we don't think they're allowed, we would want to
25 call Mr. Defilippi.

15:40:51 1 Thank you.

15:40:51 2 THE COURT: Okay.

15:40:52 3 MS. NYARADY: Your Honor, with respect to Nick
15:40:57 4 Jones, he was not only identified in an interrogatory
15:41:01 5 response, but he was also identified at the deposition of
15:41:08 6 Ms. Voss back in November of 2023. And under the law, we
15:41:14 7 think that is sufficient. The rules specifically says that
15:41:18 8 you have a duty to supplement if the person is not otherwise
15:41:22 9 identified through discovery. And, in fact, when you go to
15:41:26 10 the committee notes it specifically says that there is no
15:41:30 11 obligation to supplement, for example, when a witness is
15:41:36 12 disclosed during the taking of a deposition. But we
15:41:40 13 understand he was not on the initial disclosures. We think
15:41:43 14 he was disclosed as being involved. He was identified at
15:41:46 15 the deposition and in the rog response for the same subject
15:41:49 16 matter.

15:41:49 17 THE COURT: And the interrogatory response, that
15:41:52 18 wasn't like on the last day of fact discovery or anything?

15:41:55 19 MS. NYARADY: No, it was not. There were still
15:41:57 20 depositions taking place a month after that. And so, you
15:42:01 21 know, we think that he ought to be allowed to testify at
15:42:04 22 trial.

15:42:07 23 THE COURT: Okay. So if he should be allowed to
15:42:10 24 testify at trial, why can't Mr. Defilippi --

15:42:15 25 MS. NYARADY: So --

15:42:16 1 THE COURT: -- who actually was disclosed in
15:42:19 2 Rule 26 disclosures.

15:42:20 3 MS. NYARADY: He was disclosed in the Rule 26
15:42:22 4 disclosures for the limited purpose of the counterclaim that
15:42:25 5 we have dropped. It was in April of 2024. And we were not
15:42:29 6 able to take his deposition because by virtue of being
15:42:32 7 allowed to add that counterclaim we said we would only take
15:42:36 8 one 30(b)(6) deposition which is what we did. They did not
15:42:39 9 put him up for that. At the same time, Your Honor, to make
15:42:43 10 life easy, I don't object to him being at trial if we could
15:42:47 11 have a short trial deposition.

15:42:49 12 THE COURT: Would you agree to a deposition of
15:42:50 13 Mr. Jones?

15:42:51 14 MS. NYARADY: We absolutely would, Your Honor.

15:42:53 15 THE COURT: How about that, I let you both
15:42:55 16 depose them pretrial?

15:42:57 17 MR. FUNG: I mean, I want to make one
15:42:59 18 clarification. Those interrogatory responses where
15:43:02 19 Mr. Jones was disclosed, it was three weeks before the fact
15:43:05 20 discovery, it was buried in the list of eight witnesses. I
15:43:08 21 want to make --

15:43:09 22 THE COURT: Buried seems a little dramatic for
15:43:12 23 eight.

15:43:13 24 MR. FUNG: Understood, Your Honor. Your
15:43:15 25 proposal allowing us to take a deposition of Mr. Jones, that

15:43:18 1 will be acceptable to us.

15:43:20 2 THE COURT: Okay.

15:43:24 3 MS. NYARADY: Your Honor, in terms of the
15:43:26 4 deposition, we would propose a couple of hours for each
15:43:28 5 witness.

15:43:29 6 THE COURT: You can both figure that out.

15:43:31 7 MS. NYARADY: Okay.

15:43:32 8 THE COURT: Paragraph 56, you can't agree on who
15:43:44 9 the corporate representative is, really?

15:43:51 10 MS. NYARADY: So Your Honor, subsequent to
15:43:53 11 having filed a pretrial order, we did exchange names with
15:43:57 12 respect to the corporate representatives. We have no
15:44:01 13 objection. We haven't heard from ARM as to whether they
15:44:05 14 have any objection, but I think perhaps this is resolved.

15:44:09 15 MS. DURIE: We do not. I don't know that there
15:44:13 16 would be a basis for one, but we do not have one.

15:44:16 17 THE COURT: I am just going to strike -- I don't
15:44:21 18 even know what I'm doing with this paragraph at this moment,
15:44:24 19 but the parties may each have a corporate representative sit
15:44:28 20 at the table. And experts are not excluded from the
15:44:32 21 courtroom. And I don't care if there is agreement on who
15:44:40 22 the corporate representatives are, but if you have one,
15:44:44 23 that's terrific.

15:44:45 24 Okay. 68. The witness will be called only
15:45:01 25 once. There are so many words here with the -- what is the

15:45:08 1 crux of the dispute?

15:45:09 2 MS. DURIE: Apologies. We have included on our
15:45:12 3 witness list Gerard Williams, the former CEO of NuVia, now a
15:45:18 4 senior vice-president at Qualcomm. We would intend to call
15:45:21 5 him in our case-in-chief adverse as we believe the rules
15:45:26 6 permit. Qualcomm has objected to that. And I do not
15:45:32 7 understand the basis for that objection and I will assure
15:45:35 8 the Court it is not for lack of asking, but we will let them
15:45:39 9 speak for themselves.

15:45:42 10 MS. NYARADY: Your Honor, we had proposed a
15:45:47 11 different course of action where the witnesses will be
15:45:50 12 called only once, will be called by the sponsoring party and
15:45:54 13 allowing the other side to go beyond the scope in cross.
15:46:00 14 And we would propose leaving open ARM's case until
15:46:03 15 Mr. Williams testifies and they finish cross-examining him
15:46:08 16 so saving the JMOLs until after he testifies, we think it
15:46:12 17 would be more orderly.

15:46:14 18 And as part of trying to resolve this, we also
15:46:18 19 put in there that if this is adopted that the witness can be
15:46:24 20 -- any live witness can be presented by deposition and the
15:46:28 21 opposing party's presentation of their case.

15:46:31 22 THE COURT: I am going to allow NuVia -- ARM to
15:46:34 23 call Mr. Williams in its case-in-chief and to the extent
15:46:39 24 that defendant wants to ask whatever it wants to ask in the
15:46:44 25 middle of that case-in-chief, defendants may.

15:46:48 1 MS. NYARADY: So if I understand, Your Honor, we
15:46:50 2 can go beyond the scope for cross and put him on once, it
15:46:54 3 will just be in ARM's case, is that what you're saying?

15:46:57 4 THE COURT: Yes.

15:46:58 5 MS. NYARADY: And with respect to the video, we
15:47:00 6 would ask that if he's going to be called in their case that
15:47:03 7 they not be allowed to play video and present him in their
15:47:07 8 case.

15:47:09 9 THE COURT: That seems fair.

15:47:10 10 MS. DURIE: That's fine.

15:47:12 11 MS. NYARADY: Thank you, Your Honor.

15:47:13 12 THE COURT: Okay. We already talked about 78
15:47:21 13 and 79, equitable stuff. The trial order, I don't know what
15:47:43 14 the dispute is.

15:47:45 15 MS. DURIE: I think this turns entirely on
15:47:47 16 whether the Court -- what the Court determines with respect
15:47:50 17 to the counterclaims and whether they are equitable or legal
15:47:55 18 and what gets tried to the jury. I don't think there is any
15:47:59 19 other dispute other than that embedded in here.

15:48:01 20 THE COURT: Okay.

15:48:02 21 MS. DUNN: Your Honor, I agree with counsel on
15:48:04 22 that. And we will brief this. I want to say, though,
15:48:11 23 strongly that the law is that they are not equitable. So --

15:48:15 24 THE COURT: I don't care what you say, prove it.
15:48:18 25 Show me in your papers. Okay?

15:48:19 1 MS. DUNN: We will do so.

15:48:20 2 THE COURT: You keep telling me that. It's not
15:48:22 3 helpful. It just makes me annoyed, and I rather not be
15:48:27 4 annoyed. You promised me you're going to show me, I'll read
15:48:30 5 the case.

15:48:31 6 MS. DUNN: Sounds good.

15:48:32 7 THE COURT: You just saying I feel strongly
15:48:34 8 about it is kind of counterproductive and it makes both of
15:48:38 9 us feel bad right now. Why don't you sit down and you can
15:48:41 10 submit your papers.

15:48:44 11 Length of trial. I am going to hold off on that
15:48:49 12 until I make a determination as to what's going to go in
15:48:54 13 front of the jury.

15:48:56 14 Jury selection. You all have agreed -- well, I
15:49:03 15 don't remember. I have a bunch of trials coming up. Have
15:49:08 16 you been asked if you'll agree to let a magistrate judge
15:49:12 17 pick the jury on the 12th or the 13th?

15:49:15 18 MS. DURIE: Yes. And I believe we have agreed
15:49:17 19 that we will.

15:49:19 20 MS. NYARADY: Yes, Your Honor.

15:49:20 21 THE COURT: Great. Sealing the courtroom.
15:49:31 22 Generally if you want to seal the courtroom you have to meet
15:49:38 23 the standard from the Third Circuit which is a very
15:49:43 24 difficult standard to meet. It's basically strict scrutiny
15:49:48 25 which means you probably lose. If you do think that you can

1 meet that and you want the courtroom closed for some reason,
2 you must tell me in advance. If you don't tell me in
3 advance, then I am definitely going to deny the request, and
4 either you won't be able to seal the courtroom or you won't
5 be able to if it's the other side's information use that in
6 the way that you want.

7 Why is all this stuff under seal for thirty days
8 after the conclusion of the trial? I mean, we're going to
9 have exhibits that are shown up on the screen. What's my
10 basis to say it's appropriate that those be sealed?

11 MS. DURIE: I believe, Your Honor, this is a
12 reference to transcripts of sealed testimony and sealed
13 exhibits. So it would provide time for the parties to
14 undesignate portions of those for public consumption.

15 THE COURT: All right. Thank you for that
16 clarification. That's okay.

17 The parties may access the courtroom to set up
18 anything they want on Friday, December the 13th in the
19 afternoon. Contact Mr. Buckson about that.

20 Paragraph 95. At the pretrial conference, this
21 sounds ominous. At the pretrial conference defendants would
22 like to discuss with the Court the process by which they may
23 work around a counsel conflict.

24 MR. BLUMENFELD: Your Honor, we hope this won't
25 even come up, but we have an issue with an agreement by Paul

15:51:44 1 Weiss lawyers not to get into issues involving Apple. I'm
15:51:48 2 not sure that there will be any issues involving Apple that
15:51:51 3 come up at trial, but if there is something that one of
15:51:54 4 their witness says about Apple, we would like to have the
15:51:58 5 opportunity to have Ms. Ying or I do the short part of that
15:52:02 6 cross-examination. I don't think there is any opposition to
15:52:05 7 that.

15:52:07 8 MS. DURIE: There is no objection to that.

15:52:10 9 THE COURT: That sounds find.

15:52:13 10 MR. BLUMENFELD: Thank you.

15:52:16 11 THE COURT: So I have jury selection will take
15:52:25 12 place on the 16th, so apparently I'm just not familiar with
15:52:39 13 what's been done, if that's the case, then with respect to
15:52:41 14 the voir dire and the preliminary instructions, the voir
15:52:50 15 dire, plaintiffs have to bring copies for the jurors. You
15:52:53 16 have to get them 24 hours, by noon the day before we're
15:52:57 17 going to select the jury which at this point would be the
15:53:00 18 12th.

15:53:04 19 On or before noon on Friday, December 13th, the
15:53:09 20 parties need to provide electronic versions of all trial
15:53:13 21 exhibits to the exhibit list to us in a single folder. The
15:53:17 22 best way to do that is to get them to us on a flash drive,
15:53:20 23 but work with your IT departments and coordinate with
15:53:25 24 Mr. Buckson so we can have all trial exhibits electronically
15:53:28 25 on the first day of trial. The exhibits need to be named

1 with their exhibit numbers, JTX, PTX, just say JTX 1, PTX 2,
2 so if I hit the files at top they'll come up in order.
3 Additionally as previously mentioned -- it wasn't previously
4 mentioned, but each morning the parties need to send an
5 e-mail to Mr. Buckson and Ms. Welham each trial day the
6 witness folders for each witness. The witness folders
7 should contain the exhibits that would have otherwise gone
8 into a witness binder organized by exhibit number. Also
9 include any demonstratives to be used with that witness.

10 And direct exams that are happening, to the
11 extent that there is going to be a cross binder that should
12 also be provided to me by flash drive, and in that one, if
13 you're going to use a deposition, include the deposition for
14 me. You need to send the cross binders to me, but if you
15 don't want to send the cross binders to the other side until
16 the witness is called, that's fine. And that's just because
17 we don't take paper copies of these things, so that way I
18 have them all in one place to pull things up if there is a
19 dispute.

20 Juror notebooks, if you guys agree on a set of
21 documents that the jury should have in binders, that's fine,
22 if you don't agree, then there are no jury binders.

23 You won't need to play the patent video, is that
24 right?

25 MS. DURIE: I don't think so, Your Honor.

15:55:02 1 THE COURT: That's just in here from a different
15:55:07 2 case. That's good. I don't know why you would want to.

15:55:11 3 Sorry.

15:55:14 4 After trial, I need for you to review the trial
15:55:18 5 transcript and submit any corrections to the court reporter
15:55:21 6 no later than two weeks after trial. That way when we get
15:55:24 7 to post-trial briefs we don't have to deal with errata.

15:55:29 8 Juror lunches, have you guys talked about
15:55:35 9 whether you want to provide lunches for the jury?

15:55:37 10 MS. DURIE: Yes.

15:55:38 11 THE COURT: All right. Thank you for that. And
15:55:43 12 I think those were the issues that I had to discuss.
15:55:49 13 Anything else?

15:55:51 14 MS. DURIE: Not for the plaintiff, Your Honor.

15:55:55 15 MS. NYARADY: Your Honor, there were a couple of
15:55:57 16 disputes in the voir dire. I don't know if you want to take
15:56:00 17 that up now.

15:56:01 18 THE COURT: No. I'm just going to decide those.
15:56:03 19 I don't need to hear anything more on those. I generally
15:56:07 20 with respect to voir dire just do my normal. And maybe if I
15:56:14 21 see something, but I did notice that the list of witnesses
15:56:28 22 went on for about three pages. Are we really -- are all
15:56:34 23 those people really need to be on there?

15:56:37 24 MS. NYARADY: I would think not, especially in
15:56:39 25 light of conversations that we had.

15:56:41 1 THE COURT: Why don't you guys provide me with
15:56:43 2 an updated list that doesn't look quite so awful for jurors.

15:56:51 3 MS. NYARDY: We will also make a change just to
15:56:53 4 take OUT the language that addresses the counterclaim that
15:56:55 5 has been dropped.

15:56:57 6 And the other last question I had, Your Honor,
15:56:59 7 was whether you want us -- we had listed every lawyer who
15:57:04 8 has touched this case for each of the firms. Would you want
15:57:08 9 us to do that, because that list is quite long as well, or
15:57:11 10 do you only want lawyers who are going to appear before the
15:57:15 11 jury?

15:57:17 12 THE COURT: So I would say only lawyers who
15:57:21 13 appear before the jury, or -- but that includes if they're
15:57:25 14 going to be in court even if they're not identified, or if
15:57:30 15 they are somehow identified in a deposition. Sometimes it
15:57:36 16 will say Ms. Smith, just so that -- you know, the point of
15:57:40 17 that is just to make sure nobody knows them. I don't think
15:57:44 18 it will be an issue. It will be anyone who appears in court
15:57:48 19 whether they're speaking or not, and whether they're live or
15:57:52 20 on video.

15:57:53 21 MS. NYARADY: Understood. Thank you, Your
15:57:55 22 Honor.

15:57:56 23 THE COURT: Anything else?

15:58:00 24 MS. NYARADY: Not for the defendants.

15:58:01 25 THE COURT: All right. Thank you everyone.

15:58:05 1 COURTROOM DEPUTY: All rise. Court is
15:58:07 2 adjourned.

3 (Court adjourned at 3:58 p.m.)
4

5 I hereby certify the foregoing is a true and
6 accurate transcript from my stenographic notes in the proceeding.

7 /s/ Dale C. Hawkins
8 Official Court Reporter
9 U.S. District Court
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